INTRODUCTION: DECODING CRIMES AGAINST HUMANITY:
TOWARDS A RECONSTRUCTIVE APPROACH

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This issue of Journal of East-West Thought is particularly devoted to the topic of crimes against humanity (CAH). Theoretically and practically, CAH is still an unsolved issue. S. R. Ratner points out, the debate on CAH is “the enduring debate” (Ratner, 2007, 583). D. Luban claims, the concept of CAH “is still in the childhood of its legal development” (Luban, 2004, 161). M. deGuzman declares, CAH has “enduring normative debates and doctrinal ambiguities” (deGuzman, 2010). M. Cupido argues that the debate concerning the theoretical characterization of the policy requirement as either an element of crime or an evidentiary relevant circumstance for CAH is deficient (Cupido, 2011). C. Macleod says: “Within political philosophy, especially that operating in the Anglo-American tradition, there has been very little consideration given to the nature of crimes against humanity. The same can be said about genocide, and indeed many other crimes referred to in international criminal law, though these offences shall not concern us here” (Macleod, 2010, 281).

Human rights, human dignity and humanitarianism should be considered the highest and most universal values in today’s world. From the broadest perspective, any behavior or action against these values can be regarded as a crime. The two most influential listings of international crimes were set out roughly sixty years apart. The 1945 Charter of the International Military Tribunal at Nuremberg identified three classes of international crime: Crimes Against Peace, War Crimes, and Crimes Against Humanity. The 1998 Rome Statute of the International Criminal Court (ICC) lists four categories of crime: The Crime of Genocide, Crimes Against Humanity, War Crimes, and the Crime of Aggression (May, 2005, 6) According to the Nuremberg Charter, CAH is one of the three categories of crimes which is defined as: “murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial, or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of domestic law of the country where perpetrated.”¹ The Rome Statute of the International Criminal Court defines CAH as “particularly odious offenses in that they constitute a serious attack on human dignity or grave humiliation or a degradation of one or more human beings.” The modern usage of CAH has its genesis in Article 6(e) of the London Charter, which repeats the Nuremberg Definition as follows: “CRIMES

¹Nuremberg Charter, supra note 5, art. 6(c), 59 Stat. at 1547, 82 U.N.T.S. at 288.
AGAINST HUMANITY: namely, murder, extermination, enslavement, deportation or other inhumane acts committed against any civilian population, whether before or during the war, or persecutions on political, racial, or religious grounds in execution with any crime within the jurisdiction of the tribunal, whether or not in violation of the domestic law of the country where perpetrated.” In my opinion, CAH can be defined as a crime or series of crimes committed as a strategic, organized, systematic, or widespread attack directed against any group of people because of race, religion, nationality, ideology, or socio-political interests. Persecutions based on gender, age, disability or poverty must also be classified as CAH. Actually, genocide, war crimes and CAH should be regarded as Three-in-One or Threefold Crime as they are interrelatable, inter-actable, and inter-transformable. Like genocide and war crimes, CAH is a most harmful crime in today’s world. In a sense, CAH is the most popular and fundamental one among these three crimes. In other word, genocide and war crime can finally be reduced to crime against humanity. For instance, “a crime characterized as genocide constitutes, of itself, crimes against humanity within the meaning of persecution” (Boot, 2000, 432).

Recently, certain scholars have conducted in-depth discussions on CAH conceptually and theoretically. D. Luban extracts a concept of CAH from the differing conceptions given in various statutes and judicial decisions: Firstly CAH is typically committed against fellow nationals as well as foreigners; Secondly CAH is international crimes; Thirdly CAH is committed by politically organized groups acting under color of policy; Fourthly CAH consists of the most severe and abominable; Lastly CAH is inflicted on victims based on their membership in a population rather than their individual characteristics (Luban, 2004, 93-103). Accordingly, in the case of CAH, there is no robust case law assigning the phrase a technical meaning, and indeed the various statutes defining it—the Nuremberg Charter, Allied Control Council Law No. 10, the ICTY, CTR, and Rome Statutes, national statutes, and a handful of law commissions' proposals—all define it differently. The pioneers of topology had no "official" definition of a topological space. Their task was to come up with one, and the raw materials they had to work with were intuitions about what conceptual work the definition was supposed to do. The term “‘crimes against humanity’ packs an enormous rhetorical wallop, and it does so not because lawyers treat it as a technical term, but rather because all of us know that ‘humanity’ means something universal and immensely important. After a century in which crimes against humanity have taken tens of millions of lives, it may be that understanding the twin meanings of "humanity" that these deeds offend is the least we owe the dead” (Ibid, 161).

For S. R. Ratner, lawyers and philosophers have offered a number of different diagnoses and prescriptions about the relative gravity of the two crimes: Genocide
and CAH are equally bad; relatively genocide is worse. He stresses that all evil acts against civilians are genocide (Ratner, 2007, 584-585). For him, a look back at the twentieth century reveals that the most critical steps in the criminalization of mass human rights constituted the academic work of Raphael Lemkin and his conceptualization of genocide; the International Military Tribunal Charter’s criminalization of CAH and the trials that followed; and the conclusion and broad ratification of the Genocide Convention. The Convention was the first treaty since those of slavery and the “white slave traffic” to criminalize peacetime actions by a government against its citizens. “Since that time, customary international law has recognized the de-coupling of crimes against humanity from wartime” (Ibid, 583). C. Macleod outlines the seven meanings of CAH: an action is a CAH if and only if: 1) it is an action contrary to the human-nature of the perpetrator; 2) it targets the human-nature of the victim(s); 3) in ignoring it, we would ourselves be acting contrary to human-nature; 4) an action that shocks the conscience of human-kind; 5) it is a crime that endangers the public order of human-kind; 6) it is a crime that diminishes human-kind; and 7) it is a crime that damages human-kind (Macleod, 2010, 281-202).

In his book, G. Robertson weaves together disparate strands of history, philosophy, international law, and politics to show how an identification of CAH, first defined at Nuremberg, has become the key that unlocks the closed door of state sovereignty, enabling the international community to bring tyrants and torturers to heel. He condemns the hypocrisy of the United States, “the nation which refuses to be bound by international human rights law [yet] demands the prosecution of foreigners who violate it (Robertson, 2007, 386). D. Chandler thinks that Robertson provides “a cogent argument about double-standards and the duplicity or realpolitik of international business and political leaders. Robertson has a valid critique of the misuse of human rights concerns as rhetoric and propaganda” (Chandler, 2000, 244).

M. Cherif Bassiouni studied the historical evolution and contemporary application of CAH. He addresses 1) The nature of CAH and the element of the policy; 2) Phenomenological and criminological considerations of CAH as a crime of state; 3) The emergence of CAH in positive international law from the Law of the Chapter to the post-World War II for formulations arising out the Chapter; 4) Post-Chapter developments; 5) The principles of legality in the London Chapter and in post-Chapter legal developments; 6) The specific acts listed in the different formulations of CAH; 7) Necessarily changes gears in order to consider ratione personae and the theories and elements of criminal responsibility; 8) The theoretical and jurisprudential histories of defenses and exonerations in the context of CAH; and 9) National prosecutions for CAH and CAH-type crimes (Bassiouni, 2011, 1-742).

In the past few years, the book series Human Rights and Crimes against Humanity published by Princeton University Press, such as Stalin’s Genocides (2011,
by N. M. Naimark), *The International Human Rights Movement: A History* (2012, by A. Neier), *The Young Turks' Crime Against Humanity: The Armenian Genocide and Ethnic Cleansing in the Ottoman Empire* (2012, by T. Akçam), and *All the Missing Souls: A Personal History of the War Crimes Tribunals* (2013, by D. Scheffer), provides a forum for debate on the perpetration of large-scale atrocities and the often highly charged political and ethical issues of human rights protection, memory, and redress that develop in their wake. This series uses a broad understanding of CAH, including genocides, ethnic cleansings, massacres, various forms of slavery, lynchings, mass rapes, and torture. Chronologically, the series runs from around 1500, the onset of the modern era marked by European colonialism abroad and the Atlantic slave trade, to the present. Geographically, it takes in every area of the globe. It publishes significant works of original scholarship and major interpretation by academics, journalists, and other writers. An important goal is to bring these crimes--and the responses to them--to the attention of a wide audience and to stimulate discussion and debate in the public sphere as well as among scholars and in the classroom. “The knowledge that develops from the series will also, we hope, help promote human rights standards and prevent future crimes against humanity.”

Obviously, with respect to the responsibility of intellectuals, an important as well as urgent task for us is to continue to contribute more scholarly studies on CAH for more wide-ranging and profound examination, argumentation, justification and criticism.

In this issue, Josef Seifert explores the nature of CAH and the moments that distinguish such a kind of crime. It indicates that such crime is featured by a quantitative magnitude and number of victims and the qualitative “inhumanity”. By this token, it contends that actions besides extermination (such as psychological persecution, torture, systematic rape, etc.), notwithstanding the horror of these crimes, constitute other types of “crimes against humanity” and do not as such constitute genocide, but augment the overall genocidal character of certain crimes. Xunwu Chen’s paper purports to explore the nature of CAH as a unique family of crimes and how the concept of CAH embodies the spirit of our time. It argues that what makes CAH profound crimes is the fact that they are crimes against the metaphysical and practical identity of all human beings; they injure humanity as the intersubjectivity of all human beings. Doing so, it will first demonstrate how the concept of CAH bears out the truth that the norm of humanity is a legal norm; humanity is a possible object of legal injury and a legitimate subject to which action is held accountable for. It then examines the four basic features of crimes against humanity, indicating that a CAH is a global crime that is motivated to injure humanity, policy-laden, and systematic.

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Finally, it further discusses the nature and precepts of the laws of humanity in virtue of which CAH are defined as so and so.

Cheikh Mbacke Gueye addresses the issue of CAH requires a robust theory about personal attitude, politics, justice at home and abroad, as well as a true conception of human nature. The author contributes to this debate by emphasizing the importance of adopting a “rooted cosmopolitanism” that neither excludes wider loyalties, nor overrides the narrower ones. It is a theory that requires, not a world state, but solid democratic, and accountable states respectful of the rights of their citizens and the demands of the human person. The call for normative democracy at the global scale is motivated by the failure of politics that has been dangerously confined to the realization of local and national interests leaving aside crucial issues that engage other people and nations. John F. Crosby starts from the ancient Greek distinction between “Greek” and “barbarian,” which seems to express an inveterate, incorrigible way of thinking about other human beings. People who are cast into the role of “barbarians” are exposed to violence and injustice at the hands of the “Greeks.” They are deprived of a certain moral protection; the “Greeks” can with a good conscience commit CAH as long as humanity is thought of as “barbarian” humanity. The author then asks how we as philosophers can overcome the Greek-barbarian way of thinking, and how, at the level of philosophical reflection, we can protect people from being degraded to “barbarians.” The author argues that we can raise a strong intellectual bulwark against all such degradation if we think of the encounter with others in terms of personalism. The author develops the personalist distinction between “environment” and “world” and shows why it is that through our world-openness we destroy the aspect of others as barbarians. The author also considers and rejects a plausible “cosmopolitan” misunderstanding of his “personalist” way of extending respect to all human beings.

Paola Premoli De Marchi’s paper consists of four parts: (i) The first part develops a phenomenological description of power as an interpersonal relationship of influence of a human being over some other human being and aim to show that the two fundamentals of any ethics of power are the respect of the recipient of the relationship – which is a human dignity endowed with a dignity - and the intentional and transcendent character of the relation itself. (ii) The second part is dedicated to the question why power is a temptation for man, namely the use of power can easily turned into abuse. (iii) The third part inquires hatred as that specific temptation of power which can motivate some human being to perform criminal acts against humanity. (iv) The fourth and final part of the paper aims to summarize the different moral responsibilities of any human being in the fight against genocide and other CAH.

Marcelo L. Cambronero and Feliciana Merino Escalera analyze the terrible phenomenon of genocide, which represents a particular case of CAH. They attempt at accounting for the causes at the root of the phenomenon, starting from two concepts, which we argue as central: the notion of ‘type’ and its impact to community construction, and the concept of ideology; the latter, understood as a philosophical perversion flourishing in an unprecedented manner in the contemporary world, allows the demonization of a group and the gestation of social processes conducing to
destruction, especially because the targeted group is viewed as carrying a particular community ‘type’. For Ericka Tucker, the problems of contemporary states are in large part “affective disorders”; they are failures of states to properly understand and coordinate the emotions of the individuals within and in some instances outside the state. By excluding, imprisoning, and marginalizing members of their societies, states create internal enemies who ultimately enervate their own power and the possibility of peace and freedom within the state. Spinoza’s political theory, based on the notion that the best forms of state are those that coordinate the power and emotions of those within a state, offers us both a diagnosis of and a cure for these affective disorders. The author will outline Spinoza’s notion of the power of the state as a function of the power and coordination of the emotions of its citizens, and show that when the state contracts an affective disorder, such as excessive crime, rebellion, terrorism, etc. the state has failed to properly empower, include and coordinate the passions of the multitude of its citizens and subjects.

An ancient Chinese proverb says, “Cast a brick to attract jade.” Its real meaning is “offer a few start-up and debatable remarks by way of introduction so that others may come up with much more valuable and creative Insights.” It is for this purpose, this special issue invites more scholars to decode CAH and consider a reconstructive approach to the various, perplexing and unresolved issues presented.

We would like to give special thanks to Professor Xunwu Chen who has organized this special Issue with his scholarly expertise and enthusiasm.

References

GENOCIDE: SOME REFLECTIONS ON GENERAL PHILOSOPHICAL, ETHICAL, AND LEGAL ASPECTS OF A MOST HORRIFIC CRIME

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Abstract: This paper explores the nature of crimes against humanity and the moments that distinguish such a kind of crime. It indicates that such crime is featured by a quantitative magnitude and number of victims and the qualitative “inhumanity”. By this token, it contends that actions besides extermination (such as psychological persecution, torture, systematic rape, etc.), notwithstanding the horror of these crimes, constitute other types of “crimes against humanity” and do not as such constitute genocide, but augment the overall genocidal character of certain crimes.

I. What is Genocide?

GENOCIDE, “the deliberate and systematic destruction, in whole or in part, of an ethnic, racial, religious, or national group”, is no doubt one of the most horrendous crimes, perhaps the most horrific one, a crime that has been committed all too often throughout the history of mankind but possibly been carried out more frequently and more cruelly than ever before in the 20th century, particularly in Europe, Asia, and Africa.

Genocide, at least in its strictest meaning, is a form of murder. Thereby it differs not only from unintentional killing of human beings, for example in an accident, whether it be through no fault of one’s own or through punishable negligence, for example by reckless driving, but also from other forms of killing human beings that we would not call murder, such as killing human beings in a just war, or administering the death penalty to a criminal. Even if we believe that death penalty for a criminal is intrinsically wrong and that no war is morally justified, we still would distinguish both of these killings from murder. Why? Death penalty differs from murder first of all because, unlike murder which anyone can commit, it cannot be administered by any individual, but only by the legitimate authority of a state or its representative, or some kind of substitute thereof, such as a jury and sheriff in the Wild West. Secondly, death penalty is preceded by the investigation into whether a given person has committed a crime worthy of death. It entails giving the indicted person the choice of defending herself or of hiring a lawyer to offer her legal defense; it presupposes laws, a judge and his sentence, etc.

None of this is part of murder that is an intentional killing of a person by an individual, a group of people, or a state (judicial murder) without there being any

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element of a just response to a crime, of punishment, of justice, or of a genuine judgment of a court. Of course also in murder, especially in judicial murder, one might organize a sham-trial, a pseudo-judge, a bogus-jury, and a mock-judgment, but then it is blunt murder mimicking the imposing of a death penalty, such as in the attempted murder of Florestan by Pizarro in Beethoven’s *Fidelio*, in which Pizarro introduces himself as judge, while Florestan recognizes him as the hate-filled murderer he is, only posing as a judge.

Also killing human beings in a military action in war differs from murder except if the war lacks any real or even subjectively assumed just cause, for example if it serves merely to conquer a country over which a state has no semblance of a right and if killing people is directly intended, in which case the killing of soldiers and civilians is equal to murder. (Of course, murder committed by soldiers during even the justest of wars remains murder and is a war-crime). Instead, a war, at least a just war, does not intend directly the killing of people but pursues such goals of war as liberation from an unjust regime in the attainment of which the killings or killed persons assume the status of “casualties” that are not directly intended. For all these and other reasons killing in a war differs from murder.

Genocide, however, is no doubt murder, being the deliberate and intentional killing of civilians and innocent people, but obviously not every murder is genocide. Genocide differs from ordinary murder first in that it is a mass-murder: the extermination of a whole group or of large parts thereof and hence of many individuals. Again, not every mass-murder is genocide, as the latter entails a number of further conditions and characteristic, as we shall see. Moreover, mass-murder (for example of thirty or hundred people) rarely or never includes killing such large numbers of people as a genocide that frequently wipes out whole tribes, populations, or nations, or major parts of them, and thus normally results in thousands or millions of victims, and already for this quantitative reason is a bigger crime than simple murder or mass-murder.

The gravity of the crime of genocide does not solely depend on the evilness of murder and on the quantity of its victims, however, but also on the innocence of the children, women, and civilian population that are murdered by it and on the utter irrationality of its motives, especially when it does not result from an understandable though evil desire of retaliation and vengeance taken by a group of people that have suffered much harm in the past from the group of present victims, but from stupid and vicious racism and other similarly irrational motives. Moreover, the murder of which it consists is often augmented in its evilness by a series of other crimes that accompany most genocide: cruelty against the victims, humiliation, torture, rape, etc. Moreover, its directness against a community and multitude of persons as well as often against their culture, stains genocide with a new dimension of evilness: that of the intent to wipe out and exterminate a whole people, tribe, race, etc.

Genocide is also called a “crime against humanity,” and this not only and not even primarily for the reason of the immense quantity of its victims which represent such a large portion of the human race that one might see their murder as being directed against humanity as such, but also, and even more, for the reason of its possessing, together with the multitude of its victims, a particularly “odious” and
“inhumane” quality, not just violating the moral and legal order, but also the humanity itself of both the victim and the perpetrator of the crime. The *Rome Statute of the International Criminal Court Explanatory Memorandum* states that crimes against humanity: “are particularly odious offenses in that they constitute a serious attack on human dignity or grave humiliation or a degradation of one or more human beings.” (As quoted by Guy Horton, 2005, 201; RSICC/C, Vol. 1, 360).

Thus one might call a brutal slaughtering and inhuman torturing of a human being a crime against humanity because it does not only constitute, as each crime does, an attack against whatever is good and noble in a human being, but against the humanity of man as such; it is an eminently *inhuman* crime that exceeds in its proportion and viciousness all of which a properly human imagination and intention of evil is capable; it is a crime beyond all proportions of those crimes that, in spite of their evilness, still bear the stamp of humanity or have at least left a dim spark of humaneness in them. For this odious quality of the crimes against humanity these must be called diabolical rather than human.

While this moment of a “crime against humanity” is well described in the quote from the *Rome Statute of the International Criminal Court Explanatory Memorandum*, the immediately following text of the latter is puzzling:

They [crimes against humanity] are not isolated or sporadic events, but are part either of a government policy (although the perpetrators need not identify themselves with this policy) or of a wide practice of atrocities tolerated or condoned by a government or a de facto authority. However, murder, extermination, torture, rape, political, racial, or religious persecution and other inhumane acts reach the threshold of crimes against humanity only if they are part of a widespread or systematic practice. Isolated inhumane acts of this nature may constitute grave infringements of human rights, or depending on the circumstances, war crimes, but may fall short of meriting the stigma attaching to the category of crimes under discussion. On the other hand, an individual may be guilty of crimes against humanity even if he perpetrates one or two of the offences mentioned above, or engages in one such offense against only a few civilians, provided those offenses are part of a consistent pattern of misbehavior by a number of persons linked to that offender (for example, because they engage in armed action on the same side or because they are parties to a common plan or for any similar reason.) Consequently when one or more individuals are not accused of planning or carrying out a policy of inhumanity, but simply of perpetrating specific atrocities or vicious acts, in order to determine whether the necessary threshold is met one should use the following test: one ought to look at these atrocities or acts in their context and verify whether they may be regarded as part of an overall policy or a consistent pattern of an inhumanity, or whether they instead constitute isolated or sporadic acts of cruelty and wickedness.

This text mixes into the notion of “crime against humanity” a third element: that such crimes must be “part of a widespread or systematic practice” or “part of an overall policy.” But this does not seem to belong properly speaking to the crimes against humanity but links these to a specific political background which neither seems essential to the mentioned qualitative moment, nor necessarily connected to the first
element of “crimes against humanity” – their directedness against a sufficiently large group of human beings such that they in some sense “represent humanity” more than, let’s say, a family would do so. Also in this regard the element of “systematic practice” or of “widespreadness” may well be lacking, and a crime against humanity may be carried out by a single person (who, for example, leads a large group of people to a cave in which they will miserably perish or, like Stalin who killed up to ten million Ukrainians in this way, deprives them of food so that millions will die from hunger, or who singlehandedly, through poisoning all their farming fields, reaches the same effect).

In the Europe of the 20th century we have to deplore many genocides, among which the multiple genocides committed by the Nazis against 6 million Jews (Wikipedia, “The holocaust,” 2013), 220,000-500,000 Sintis and Romas (“Gypsies”), (United States Holocaust Memorial Museum, 2013), 2.4 million Poles, and at least 3.3 million Russian POW’s in Mauthausen, etc., are the most systematic and coldly planned ones. Not less terrible are the genocides that have been carried out by Stalin (Naimark, Norman M., 2010): through an artificially provoked famine against 7-10 millions of Ukrainians (Holodomor, 1932-1933), during which approximately 25000 people died daily, and others (The History Place, 2013; University of Chicago, 2013, Ukraine-Holodomor). But equally barbarous and cruel European genocides continued until recently during the Balkan war in Srebrenica and elsewhere. One must also not forget the genocides committed by Ismail Enver (Turkey, 1915-20) of 1,200,000 Armenians (1915) + 350,000 Pontian Greeks and 480,000 Anatolian Greeks (1916-22) + 500,000 Assyrians (1915-20) (Wikipedia, 2013, “The Armenian holocaust”; Scaruffi, Piero, 2006).

In Africa, between 1966 and 1970 a total of 3.5 million Igbo and other Southeasterners were murdered in Biafra by the Nigerian state and its people in the most gruesome manner anyone can imagine. It is regarded as the worst pogrom and ethnic cleansing act that has been visited on any people since the end of the World War II, and one against which the Western world has done nothing, and which, on the contrary, Britain, USSR, and Egypt even have aided and abated, supplying to Nigeria men and weapons of mass destruction. The atrocious genocide committed against the Igbo (or Hibu) Tribe in the 1960ies (followed by further crimes committed against this people until today) and the genocide which occurred in Rwanda during April 1994, during which approximately 800,000 Tutsis were systematically and brutally murdered by the Hutu Militia and approximately 500,000 women have become victims of rape and of other forms of sexual violence and mutilation, are the best known and possibly the most horrific, but by no means the only ones on the African continent (History 2013).

In Asia, the most terrible genocides have been carried out in Khmer Rouge, led by Pol Pot, Ta Mok and other leaders, organized the mass killing of approximately 1.7 million Cambodians between 1975–1979, including deaths from slave labor, and these are only a small part of the genocides perpetrated during the last century or continued into the 21st century. Piero Scaruffi (Scaruffi, Piero, 2013) gives a horrendous list of 62 genocides in the 20th century.

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The question as to what exactly is meant by the term “genocide,” however, is not easy to answer, and the term is far from staying free of ambiguities. Raphael Lemkin (Lemkin, R., 1944) coined the term “genocide” by combining the Greek word *genos* (γένος; race, people) and the Latin *caedere* (to kill). The Wikipedia article “Genocide” defines it as “the deliberate and systematic destruction, in whole or in part, of an ethnic, racial, religious, or national group”. (Funk, T. Marcus, 2012, 1; Lemkin, Raphael, 1944, ix, 79).

The first much disputed question regarding this definition has been how large a “part” of a group of victims of extermination must be killed for an action to qualify as genocide. It seems that a country, military, or terrorist paramilitary units must kill a major part of the respective group (at least inasmuch as the latter is under the sphere of influence of those who perpetrate the crime) to constitute genocide. No one would call the killing of 5 or 10 members of a certain group “genocide.”

However, almost more important than sheer numbers or percentages is the element of the “deliberate and systematic destruction… of an ethnic, racial, religious, or national group,” in order to consider a crime genocide. For as soon as this element is present, we speak of genocide or at least of a genocidal intention. One has therefore to add to this definition this further element, namely that, for a killing to be genocide, the killing must be carried out *for the reason of the victims belonging to* such a national, racial, societal or other group (which of course does not exclude that there are additional reasons and motives why a certain people or group are hated by others.)

This has been well recognized by Barbara Harff, Helen Fein and Ted Gurr in their distinction between genocide and politicide. (Harff, Barbara and Gurr, Ted, 1988; Harff, Barbara/Fein, Helen. ed. 1992, 37, 38). They defined genocide as “the promotion and execution of policies by a state or its agents which result in the deaths of a substantial portion of a group … [when] the victimized groups are defined primarily in terms of their communal characteristics, i.e., ethnicity, religion or nationality.”

Thus, even if a whole tribe or nation is killed in a war but if the systematic killing is carried out for another reason than the belonging of certain individuals to a certain ethnic or other group, for example if they are killed because all members of that group are actively involved in a political uprising, or are soldiers of an enemy country or are being killed in military strikes dictated by war strategies, one might condemn the being cruelly killed or exterminated of a whole group of persons and find it equally monstrous as genocide, but should nevertheless not call such a crime genocide, at least not if the civilian or politically unengaged members of their families are not killed as well.

For this reason, the crimes against humanity carried out in Sudan since 2003 may have been incorrectly classified by US Secretary of State Powel as “genocide.” However, note that the question of whether a monstrous crime of ethnic cleansing or murder is genocide or another type of mass murder is of entirely secondary significance. For although a crime cannot be classified as “genocide,” it may still be a politicide, or a war crime against humanity that is not less heinous than a genocide.
This may be true about the crimes carried out by the government in Sudan since 2003, which have been called genocides. However, in January 2005, an International Commission of Inquiry on Darfur, authorized by UN Security Council Resolution 1564 of 2004, issued a report to the Secretary-General stating that “the Government of the Sudan has not pursued a policy of genocide.” Nevertheless, the Commission cautioned that:

“The conclusion that no genocidal policy has been pursued and implemented in Darfur by the Government authorities, directly or through the militias under their control, should not be taken in any way as detracting from the gravity of the crimes perpetrated in that region. International offences such as the crimes against humanity and war crimes that have been committed in Darfur may be no less serious and heinous than genocide.” (Wikipedia, “Genocide,” 2013).

Still another ambiguity touches the question as to whether only acts of attempted or real extermination and murder qualify as genocide, as the name (from the Roman word-root caedere, to kill, also occidere, occisio) itself suggests, or also other acts, for example, depriving members of a group of important human rights, inflicting physical or psychological harm on a group, or depriving members of the group of their children by forced abortions or by forcibly putting these children under the care of other groups, etc., qualify as genocide.

Consider, for example, the definition found in the 1948 United Nations Convention on the Prevention and Punishment of the Crime of Genocide (CPPCG), Article 2 of which defines genocide much more widely as “any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life, calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group; [and] forcibly transferring children of the group to another group.” (Office of the High Commissioner for Human Rights, 2 May 2008). Also Lemkin defined genocide in another passage as follows: “Generally speaking, genocide does not necessarily mean the immediate destruction of a nation, except when accomplished by mass killings of all members of a nation. It is intended rather to signify a coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups, with the aim of annihilating the groups themselves. The objectives of such a plan would be the disintegration of the political and social institutions, of culture, language, national feelings, religion, and the economic existence of national groups, and the destruction of the personal security, liberty, health, dignity, and even the lives of the individuals belonging to such groups.” It seems to me, however, that such criminal acts per se, when separated from killing, are not genocides, because, as the very word-meaning suggests, genocide properly speaking, entails the killing or extermination as an indispensable moment of this crime.

In 2007 the European Court of Human Rights (ECHR) noted in its judgment in the Jorgic v. Germany case (European Court of Human Rights, 2007, § 47; European
Court of Human Rights. Judgment in Jorgic v. Germany Application no. 74613/01, §§ 18, 36, 43–46, 74) that in 1992 the majority of legal scholars took the narrow view that “intent to destroy” in the CPPCG meant the intended physical-biological destruction of the protected group and that this was still the majority opinion. But the ECHR also noted that a minority took a broader view and did not consider biological-physical destruction was necessary for genocide; rather, the intent to destroy a national, racial, religious or ethnical group was enough to qualify as genocide.

According to Rummel (Rummel, R.J., 1997), genocide has 3 different meanings:

1. The ordinary meaning is murder by government of certain people due to their national, ethnic, racial, or religious group membership.
2. The legal meaning of genocide refers to the international treaty, the Convention on the Prevention and Punishment of the Crime of Genocide. This also includes acts that are not killings but in the end eliminate the group, such as preventing births by forced contraception or abortion, or by forcibly transferring children out of the group one intends to destroy to another group.
3. A generalized meaning of genocide is similar to the ordinary meaning but also includes government killings of political opponents or otherwise intentional murder.

It may well be that all acts that correspond to any of these three meanings and include the killing of large groups of population are acceptable senses of genocide, although the abovementioned distinction between genocide and politicide (which is absent from Rummel’s third meaning of genocide) ought to lead us to restrict the acceptable meanings of genocide to the first two. Rummel and many others have attempted concrete analyses of the genocides of the 20ieth century and a philosophical-juridical clarification of the nature of the crime of genocide (Rummel, R.J.: March 1997; 1990; 1991; 1992; 1994).

II. What Commits and Who is Morally Responsible for Genocide?

While, in the age of the atomic bomb, one single individual could conceivably commit genocide by just pushing a button, genocide is normally a crime committed by many persons who act as a group and among whom there exists a certain gradation of responsibility and consequently of guilt, but all of whom are seriously guilty of their own crimes carried out as part of genocide.

Participating in the collectively executed crime of genocide is no less immoral than committing personally a similarly brutal crime. This remains entirely true, even though the prosecution of genocide and other crimes against humanity is usually restricted to the main culprits: heads of state, generals or high military officers, who have ordered their subjects or soldiers to commit those crimes the totality of which constitutes genocide. This may be partly the sheer consequence of limitation of human justice. For if millions of people partook in genocide, where will judges find the time and states the space to punish all of them duly? It may of course occur that a genocide is carried out by an enraged society without any higher political or military commands and that it is the cruel and bestial action of a fanaticized and frantic mass
of people in which, however, each person bears his own responsibility for committing the individual crimes, which, in their entirety, amount to genocide.

It is likewise possible, as it was in Rwanda before the genocide of the Tutsis, that the population is informed by the government and militia that any citizen who will not kill their own neighbors, will be killed himself by the military. In such a situation, notwithstanding such threats, the participation in murder remains a criminal action that cannot exculpate those who obeyed such exhortations or commands, even if those who ordered and forced them to commit those crimes bear the greater responsibility. Nevertheless, as Socrates says in Plato’s Gorgias and Crito, we must never commit injustice, even against those from whom we have suffered it, or in order to avoid suffering it, and it is better, not only in itself, but also for any man or woman, to suffer injustice than to commit it. This shows that ethically speaking the situation of “the earnest case” (the Ernstfall) of genocide whose perpetrators demand our cooperation makes heroism and martyrdom a moral duty for everyone.

The fact that the crime of genocide is carried out by many and that there are normally main culprits in it, namely those who command and direct its execution, does not change the fact that ethically speaking each and every one who participates in the crime of genocide on his own accord or by obeying criminal orders, or by allowing himself to be intimidated by threats to such an extent that he commits abominable crimes, and who takes active or passive part in a genocide, is seriously guilty. For each individual member of the group that carries out a genocide, even if he is ordered to and threatened by death if he does not participate in it, has morally speaking a strict duty to refuse obedience to the unjust and evil commands of performing intrinsically evil acts such as mutilation, murder, rape, etc. and of participating in the genocidal crime against humanity. Moreover, while in history often not only fear but also a kind of infectious general blindness and mass-fanaticism that frequently underlie genocide, may reduce the responsibility and guilt of the individual in some respects, in other respects the individual crime becomes far worse and far more evil by being intended as taking part in a genocide that is a crime against humanity and is a crime far worse than even the most cruel individual murder.

III. Conditions and Motives of Genocide

Genocide normally is preceded by certain preconditions (Staub, Ervin, 2011, 8). Foremost among them is a national (anti-)culture of death (as John Paul II called it) among the perpetrators of genocide that does not recognize the high value and dignity of each human life. A totalitarian government, with an ideology of the assumed superiority of a certain culture or race, is another factor that can easily give rise to genocidal acts. If above and beyond this members of a dominant society perceive their potential victims as less than fully human: as “savages,” “barbarians,” “degenerates,” “ritual outlaws,” “racial inferiors,” or as inferior for religious, ideological or political reasons: as “pagans,” “unbelievers,” “class antagonists,” “counterrevolutionaries,” and so on, such a view can easily give rise to genocide, although of course some such views do not necessarily lead to such a horrendous crime. In themselves, these ideological conditions alone are insufficient for the
perpetrators to commit genocide. Those who perpetrate such a horrendous crime normally need a strong, centralized authority and bureaucratic organization as well as madmen or criminals to govern them and to supervise and direct genocide. New states or new regimes, attempting to impose adherence to a new ideology and to a new model of society, implemented in a totalitarian way, are particularly prone to genocides. In many cases, for example in Nazi Germany, also a demagogical campaign of vilification and dehumanization of the future victims of genocide, a hate-speech full of contempt, has to be carried on for some time by the perpetrators of a genocide in order to convince a nation, or at least the collaborators in the crime, of the justification of killing the victims.

Some authors have focused on psychological and social processes that create a tendency toward genocide. Helen Fein – who fails to distinguish clearly between the radically different phenomena of (1) a religiously motivated negative response to Judaism that often assumes evil traits of unloving rejection, (2) a stupid racist anti-Semitism, and (3) a socially motivated anti-Semitism nourished by envy of Jewish power and wealth – argued that pre-existing anti-Semitism and systems that maintained anti-Semitic policies were related to the number of Jews killed in different European countries during the Holocaust (Harff, Barbara and Gurr, Ted, 1988; Harff, Barbara, Fein, Helen, ed., 1992, 37, 38).

Ervin Staub offered some plausible arguments that economic crises and political disorganization were starting points of increasing discrimination and violence in many instances of genocides and mass killings. A country suffering a deep economic crisis easily will engage in scapegoating a group or certain religions or ideologies that are identified as enemies and blamed for economic or political woes.

This happens more frequently against the background of a history of devaluation of the group that becomes the victim of genocide, or, as in Rwanda, of past oppression, violence or crimes committed by the group of future victims against the group that becomes the perpetrator of genocides. For if the latter has suffered injustice and psychological wounds from the former and nourishes some deep-seated grudge against its members, this will contribute to the probability that some initial understandable though evil retaliation or violence might develop into genocide. Intense and unresolved historical conflicts between groups become intractable and can thus be prone to contribute to violence and genocide.

A careful study of the historical and psychological conditions that may lead to genocide and above all good responses and reactions to potential sources of genocide provide guidance to early prevention of such tragedies: such as teaching and presenting the full human dignity of a devalued group in literature, joint schooling, integrated preschool and kindergarten, joint orchestras and cultural cooperation and events such as those organized by the Israeli-Palestinian joint youth orchestra, or the preaching of a religion and teaching of an ethics that embraces all human beings and all groups.

Some authors believe that monotheism or any conviction of metaphysical or religious absolute truths will eventually lead to genocide. In reality, however, the worst ideologies and totalitarian states that committed genocides of a magnitude never seen before have based their unjustifiable will to power and their criminal
actions on a complete relativism. It has been shown by a number of authors that both Nazism and the vicious communism of the Stalinist Soviet Union, as well as Italian fascism, were based on a complete relativism and in no way on a notion of absolute truth. This is also quite logical: For if there is no truth, everything is permitted or at least nothing is forbidden (Solzhenitsyn, 1994; Buttiglione, 1991; Seifert, 1998; 2012; Hildebrand, 1994).

On the other hand, it does not at all depend on whether somebody holds something, an X, to be absolutely true, but it entirely depends on the concrete content held to be true, whether his belief in absolute truth will lead him to commit or to reject violent crimes such as genocide. If he believes, for example, in the absolute superiority of the white race over the black race, or in the evolutionary inferiority of the Jews over the Arians, he might be motivated, by the mediation of many additional factors, to commit genocide. If, on the other hand, he is convinced of the absolute truth of the equal ontological dignity of each human person or of the true existence of objective justice, and of basic human rights including a universal right to life, he will of course reject any form of murder and genocide.

Therefore it is plainly stupid to claim, with Assmann and many others, that the monotheist religion or the conviction that there is an objective and absolute truth (part of) which we can know, led, in more or less direct consequence, to Hitler and the concentration camps. Invoking Moses in this context, and his exit from polytheist Egypt to the desert and mount Sinai, is especially ludicrous given that the absolute respect for each human life is precisely the fifth commandment received by Moses on the Mount Sinai and Pharaoh and his soldiers, with their many gods, intended to exterminate the Jews during their (previously granted) exodus from Egypt. Likewise, the claim that any belief in a religion taken to be absolutely true and revealed by God, or any judgment that other religions are not based in their entirety on truth will lead to dictatorship, oppression, and a violence against other believers, or even to the Nazi extermination camps, is both totally ahistorical and totally thoughtless, even if of course, regrettably, many Jews, Moslems, Hindus, and Christians have interpreted their religion in a way that justified pogroms or religious wars. Monotheism as such, however, or the conviction that Christ is the only Savior or that the Catholic Church is the only true Church and instrument of salvation, of themselves in no way will lead to genocide nor does relativistic adherence to many gods and religions necessarily lead to peace, as Jan Assmann, a historian who falsified the history of polytheist cultures which abound of cruelties and wars, claimed (Assmann, 1998).

IV. Genocide as a Matter of International Law and Punitive Justice

The universal acceptance of international laws forbidding genocide was achieved only in 1948, with the creation of the Convention on the Prevention and Punishment of the Crime of Genocide (CPPCG). Therefore, genocidal crimes committed prior to 1948, such as taking part in the Holocaust, were prosecuted simply as "crimes against humanity, "or under the rubric of less specific crimes like murder (Funk, T. Marcus, 2012, 1; Schabas, William, 2000, 198).
When the mentioned UN Convention on the Prevention and Punishment of the Crime of Genocide was drafted, it was already envisaged that it would apply not only to forms of genocide existing at the time, but also "to any method that might be evolved in the future with a view to destroying the physical existence of a group". And no doubt the official recognition by International law of genocide as a severely punishable crime was an important step towards a new and better world order and world peace, even though some of the most horrible perpetrators of genocide, for example in Nigeria (Biafra), remained virtually unpunished and continue remaining so. Genocide is now a crime under international law regardless of whether committed in time of peace (such as Stalin’s extermination of 7 to 10 million Ukrainian farmers by means of an artificially produced famine) or in time of war (such as those genocides committed by the Nazis on 3.3 million Russian POW’s in Mauthausen or those committed during the “Balkan war” in the territory of the former Yugoslavia in Srebrenica and elsewhere). (Prosecutor v. Radislav Krstic, 2004, § 6) The preamble to the CPPCG states that “genocide is a crime under international law, contrary to the spirit and aims of the United Nations and condemned by the civilized world,” and that “at all periods of history genocide has inflicted great losses on humanity.”

Today, irrespective of the context in which it is committed, genocide is an internationally recognized and most severely punishable, though rarely actually punished, crime.

V. Should the Revelation or Denial of the Historical Truth about the Occurrence of Certain Genocides be Banished and Prosecuted by the Law?

Revisionist attempts to deny or challenge claims of genocides are illegal in some countries. For example, several European countries ban denying the Nazi Holocaust, whilst in Turkey it is, quite on the contrary, illegal to refer to mass killings of Armenians, Greeks and Assyrians by the Ottoman Empire towards the end of the First World War as a genocide.

It seems clear that any telling of the truth about a genocide ought not to be punished and everyone should be free to tell the truth on such important matters as the occurrence of genocides and about the perpetrators of it, about the nations that indirectly cooperated with genocides by delivering weapons to governments engaged in genocides, or the lack of legal sanction against criminals involved in them.

The question whether a denial of the historical truth of the occurrence of genocides ought to be punished is more difficult to answer. Given the fact that millions of victims died in these genocides and that the historical facts about them are established without a shadow of reasonable doubt, it does indeed seem to be not only mad, but an offense against the victims and their families, to deny such truths as the holocaust, such that an interdiction of denying these genocides and even a punishment for denying them in public seems in order. Nevertheless, it seems to be questionable to punish a person who is not a neo-Nazi and who neither supports committing a genocide or similar crimes, nor committed any of them, nor cooperated with them, for not believing the extent of the atrocities of a given genocide. This seems especially pharisaical if many of those who perpetrated or supported genocides (for example in
Nazi Germany) are in no way punished for their horrendous crimes or cooperation with them, while others who, while condemning these crimes, perhaps in virtue of a foolish belief in the goodness of the German people who “could not have done such a thing,” or because of phony historical documentations about an alleged concerted lie about the holocaust, express their doubts not about the wrongness, but about the actual occurrence of a holocaust. I am inclined to think, that only when the perpetrators and collaborators of genocide are drawn to account for their crimes, also the punishment of those who deny blatant historical facts, thereby offending the families of victims of genocide, is right.

VI. The Moral Duty of the World-Community and of Individual State to Prevent Genocide or to Stop It Starts to occur

A major criticism of the international community’s response to the Rwandan Genocide was that it was reactive, not proactive and that the international community has developed a mechanism for prosecuting the perpetrators of genocide but has not developed the will or the mechanisms for intervening in a genocide as it happens.

In the light of our grasp of the nature of genocide it is obvious that there exists a duty of the world community and of individual states never to participate actively in genocide, and far more: It is clearly a duty of each state that is able to do so to become active in stopping or preventing genocide if its imminent occurrence is foreseeable or if it has begun. The objectives of the moral, political or military battle against genocide do not merely consist in paying attention to the first warning signals of an imminent genocide, with the intention to prevent the mass murder of certain groups, or to safeguard the very existence of a community of certain threatened human beings, and to affirm energetically the most elementary principles of humanity and morality. Rather, each state and the world community have the additional duty to protect concretely groups against diverse forms of inhuman oppression, enslavement, privation of rights and of life support, and against verbal assaults and humiliations that easily may give rise to genocide. Moreover, it is definitely a duty of the world-community, based on a global solidarity of mankind profoundly elaborated by Max Scheler, to protect groups that are being slaughtered, against genocide (Seifert, 1997), if necessary, through military intervention.

In view of the most basic human goods and rights that are involved when genocide occurs, the UN and the world at large have recognized after world war II in 1948) that the legal and moral obligations regarding genocide do not restrict themselves to refraining from genocide, but also consist in a far more active involvement: of watching world-wide for warning signals of imminent threats of genocide or similar crimes against humanity, and of protecting groups in danger. Moreover, both of these obligations that have their root in natural moral law and prepositive human rights, are to be recognized as obligations the world-community and sufficiently powerful states have erga omnes. In other words, the International Community and certain powerful states, if persecuted people and victims of genocide cry out for help, do not only have a strict duty of protecting any endangered group on
their proper territory and sphere of immediate influence against genocide. Rather, the international community, whether it is organized in the UN or not, has in regard to real or threatening genocide an “obligation erga omnes,” i.e., an obligation precisely also towards any real or potential victim of genocide world-wide. The world-community has most frequently failed to live up to this obligation, sometimes because of the pacifistic conviction that any war and armed intervention is evil, other times because states did not feel entitled or even permitted to send their own sons into battle and potentially into death for a foreign nation. As to the first reason: no doubt, if ever a war can be just, then a war to prevent genocide. As to the second one: if a state does not hesitate to send its troops to potential death in order to prevent Argentina to take possession of its neighboring island, the Malvinas, or to defend a similarly insignificant military or economic advantage for one’s nation with one’s life, how much more should a country be ready to rush to aid other peoples exposed to death and to the most gruesome cruelties of crimes against humanity, if the victims implore them to defend them.

VII. Stages of Genocide and Measures to Prevent It

In 1996 Gregory Stanton, the president of Genocide Watch, presented a paper on “The 8 Stages of Genocide” at the United States Department of State (Stanton, Gregory, 2013). In it he suggested that genocide develops in eight stages that are “predictable but not inexorable”. The Stanton paper was presented at the US State Department shortly after the Rwanda genocide and much of the analysis it contains is based on why that genocide occurred. Stanton also suggested preventative measures that the United States could implement directly, or use their indirect influence on other governments, to have them implemented. The Wikipedia article “Genocide” renders Stanton’s theory thus (see also Stanton, Gregory, 2013):

<table>
<thead>
<tr>
<th>Stage</th>
<th>Characteristics</th>
<th>Preventive measures</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Classification</td>
<td>People are divided into “us and them”.</td>
<td>“The main preventive measure at this early stage is to develop universalistic institutions that transcend... divisions.”</td>
</tr>
<tr>
<td>2. Symbolization</td>
<td>“When combined with hatred, symbols may be forced upon unwilling members of pariah groups...”</td>
<td>“To combat symbolization, hate symbols can be legally forbidden as can hate speech”.</td>
</tr>
<tr>
<td>3. Dehumanization</td>
<td>“One group denies the humanity of the other group. Members of it are equated with animals, vermin, insects, or diseases.”</td>
<td>“Local and international leaders should condemn the use of hate speech and make it culturally unacceptable. Leaders who incite genocide should be banned from international travel and have their foreign finances frozen.”</td>
</tr>
<tr>
<td>4. Organization</td>
<td>“Genocide is always organized... Special army units or militias are often trained and armed...”</td>
<td>“The U.N. should impose arms embargoes on governments and citizens of countries involved in genocidal massacres, and create commissions to investigate violations”</td>
</tr>
<tr>
<td>5. Polarization</td>
<td>“Hate groups broadcast polarizing propaganda...”</td>
<td>“Prevention may mean security protection for moderate leaders or assistance to human rights...”</td>
</tr>
</tbody>
</table>
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6. Preparation

“Victims are identified and separated out because of their ethnic or religious identity...”

“At this stage, a Genocide Emergency must be declared...”

7. Extermination

“It is ‘extermination’ to the killers because they do not believe their victims to be fully human.”

“At this stage, only rapid and overwhelming armed intervention can stop genocide. Real safe areas or refugee escape corridors should be established with heavily armed international protection.”

8. Denial

“The perpetrators... deny that they committed any crimes...”

“The response to denial is punishment by an international tribunal or national courts.”

In April 2012, it was reported that Stanton would soon be officially adding two new stages, Discrimination and Persecution, to his original theory, which would make for a 10-stage theory of genocide.

Both Stanton’s analyses of these stages of genocides and of their characteristics, and his proposals of how the USA and the world community ought to react at each stage seem to be excellent, although some points would bear a critical examination. One can only hope that the criteria of Stanton or similar ones will be further studied and above all concretely applied in time and that the measures Stanton proposes as national and international responses will be given immediately in order to help to prevent in the 21st century horrors similar to the genocides of the last century.

VIII. Live for the Survivors and Perpetrators of Genocide: Justice and Mercy; Planning Retaliation or Begging Pardon and Forgiveness

There exists another moral and human problem of immense proportions: how can the life of a society continue after genocide? How can the survivors of the group of victims of genocide continue to live door to door, in the same village, with the murderers of members of their family, with their rapists, etc.? This problem exists especially after a genocide in which a whole tribe or large portions of the general population participated, as it was in Rwanda, where now many Tutsis live in the same country or village in which the murderers of their children or husbands, or their rapists and the rapists of their wives live. How is this humanly and psychologically speaking possible? What are the moral implications? There seems to exist four main roads which can be taken by the survivors of the group victimized by genocide and by its perpetrators: two of them, in different degrees, are noble and good, but the two others, again by different degrees, are morally speaking negative:

(1) The first path would be that of an ice-cold separation and barrier which either will, if the genocide was committed by inhabitants of the same country, lead to the partition of the country into two states, or to a complete social and possibly geographic separation.

(2) The second road is worse: it is that of a spiral of evil and violence, it is the way of planning vengeance and retaliation or of attacking immediately, as far as possible, the perpetrators of the genocide by criminal acts directed against them, with
the strong possibility of the other side, now having turned into victims of crimes, will likewise react with hatred and retaliation.

(3) The third possible answer demands the execution of justice as condition of the realization of any objective moral and just order and of a peaceful coexistence based on the high value of justice and on truth. Peace and harmony among people are impossible on the basis of a lie or a simple repression of what has happened, as we have already seen above.

(4) The fourth road would be that of asking for forgiveness and of forgiving, a road of mercy and of pleading for mercy. It is the only path that can lead to an authentic new community and to more than a just and peaceful order of society.

The first two ways, though not being noble and even evil, seem to come more naturally to the human race. The second two, however, are noble and praiseworthy. The way of establishing justice flows from an insight into the high value of justice and into the impossibility of achieving true peace without true justice and without criminals receiving the deserved punishment or doing, as far as possible, amend for their crimes. For it is evident that initiating such horrendous crimes or cooperating in them deserves severe punishment. As long as punitive justice is not done and no attempts at (a largely impossible) restitution are made, a profound moral and metaphysical disharmony will float over a country like a dark and ominous cloud which renders authentic human community impossible and will lead again and again to new conflicts and crimes. This fourth way, which does not suspend but presupposes the way of justice, however, is the most sublime and noble, but also the most difficult one to achieve. I recall here an admirable example of it: a young and beautiful medical doctor in Columbia, South America, spoke publically of the unspeakable evils and crimes committed against her after she had fallen in the hands of a terrorist group: her body and face had been cut with knives by her torturers, she had been repeatedly raped and mistreated in countless and most humiliating ways. Years after her liberation, one of her worst torturers came to her, fell on his knees and asked, under tears, for her forgiveness for the horrible things he had done to her. And she responded with complete forgiveness of the evil he had done her. Through these acts of begging pardon and pardoning peace and perhaps even some kind of love and friendship between them became possible.

Her forgiving was no doubt a free gift; he had no right to it. Her forgiveness did not declare his acts to be harmless or innocent. No, without recognizing his freedom and the evilness of his acts, she could not have forgiven him because there would not have been any injustice and evil to forgive the evildoer; there would not have been anything to forgive. Forgiving him, she also saw that he was a free agent who had freely abused his will to rape and torture her. She could not have forgiven a machine or marionette that would have hurt her and not even a human being totally determined by his genes and upbringing: she could only forgive a free agent who had wronged her and was responsible for criminally abusing her. By her forgiving, she could of course not dissolve the disharmony of the morally evil act itself, nor forgive the man who mistreated her so gravely, his great sins. She could only forgive him for having done her a great objective evil for her.
This merciful forgiving is not contrary to justice, however, which it presupposes: forgiving her assaulter presupposed her insight that truly a horrible wrong and injustice had been committed against her through the man who asked for her forgiveness and whom her whole natural instincts and inclinations and justified outrage drove her to hate and to hold in utmost contempt. She also realized that in virtue of having been a victim of his crimes she had a kind of spiritual and in her case also a legal claim against her cruel and unjust prison guard. Without understanding all of this, she could not have forgiven him properly.

Moreover, the victim of these crimes had to recognize the fact that the criminal man, with his present free will, took back and disavowed the wrong he had done her even if he could not make his deed undone or delete the consequences of his actions: her scarred body and the psychological and physical evil he had done her. But through forgiveness, she could as it were tear up the objective claim she held in her hands against him; she could even renounce the wish that he would give her as much as he could of what he owed her to make restitution and amend his deeds and reduce her demands against him. Above all, she became able to affirm the value of his person and the goodness of his retracting and regretting his deed.

The strength of such forgiveness and the mercy it contains can hardly be possible without love and charity that far exceeds the level of justice and even the level of what ordinary human beings are capable of doing. The forgiveness this doctor showed to her torturer went far beyond justice, in affirming the value and dignity of this criminal person, a value and dignity he possesses in spite of his evil deeds (Crespo, Mariano, 2002). Forgiveness, like love, does not nail the other person down to the evil he committed, does not identify the person with his evil deeds Forgiving the man, she did not only acknowledge the dignity he possessed notwithstanding his deeds, but also the good will his pleading for pardon entails. She was no doubt also moved to forgive by recognizing this value of his feeling sorry for what he had done and of the humility of his asking for pardon. (Hildebrand, Dietrich von, 2009, ch. 3; 11).

This last and most noble way to respond to the horrors inflicted and committed by genocide cannot be realized by a state or by international law but only by persons who perform morally good acts. It requires profound and humanly speaking extremely difficult acts from both sides: the perpetrators of the crimes must acknowledge, in all humility, that they have offended in horrible ways against the dignity of the victims, that they have done them great wrong, are responsible for the multiple evils they have done to them and their families and for all the atrocities they have committed. And those who can forgive have to overcome all feelings of hatred and vengeance. They even have to transcend their thirst for justice and have to be able to look beyond the evil deeds of a person to a dignity and to values which he possesses in spite of his deeds.

I would suggest that, without going beyond the order of justice, necessary and important as it is, and without reaching that fourth and highest level of the response to the perpetrators of genocide and to their victims, healing, profound peace and a solution to the incredible wound genocide leaves in a society, both in perpetrators and victims, is unreachable.
GENOCIDE

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*Journal of East-West Thought*
THE CONCEPT OF CRIMES AGAINST HUMANITY
AND THE SPIRIT OF OUR TIME

Xunwu Chen

Abstract: This paper purports to explore the nature of crimes against humanity as a unique family of crimes and how the concept of crimes against humanity embodies the spirit of our time. It argues that what makes crimes against humanity profound crimes is the fact that they are crimes against the metaphysical and practical identity of all human beings; they injure humanity as the intersubjectivity of all human beings. Doing so, it will first demonstrate how the concept of crimes against humanity bears out the truth that the norm of humanity is a legal norm; humanity is a possible object of legal injury and a legitimate subject to which action is held accountable for. It then examines the four basic features of crimes against humanity, indicating that a crime against humanity is a global crime that is motivated to injure humanity, policy-laden, and systematic. Finally, it further discusses the nature and precepts of the laws of humanity in virtue of which crimes against humanity are defined as so and so.

THE DOCTRINE of crimes against humanity singles out a family of crimes in which humanity itself is the receiver of criminal injury. It outlines a range of acts of states (governments) and communities toward citizens or civil populations that are legally prohibited and sanctionable in terms of global justice and the laws of humanity. The doctrine is part of the spirit of our time. As a philosophical problem, the issue of crimes against humanity is one aspect of a more general problem of global justice and cosmopolitanism. In global justice, statutes defining crimes against humanity purport to impose legal obligations on states (governments), communities, and persons with regard to protection of humanity as the metaphysical and practical identity of all human beings, as the supreme value for humankind, and as a species. Global justice imposes legal obligations on how governments, states, or communities ought to treat citizens or civil populations and puts a limit on what states (governments) or communities can do to citizens or civil populations. “Crimes against humanity are now clearly part of a functioning, institutionalized system of international criminal law” (Vernon 2002, 233). And a functioning institutionalized system of international criminal law move further the course of the cosmopolitan project of global justice and humanity.

That being said, some important conceptual and normative questions of crimes against humanity remain outstanding. How best to define the nature, scope, and limit of crimes against humanity in terms of global justice? How best to conceive crimes against humanity as a particular family of legal inversions and offences, demarcated

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from other categories of crimes, e.g., from ordinary murder, or rape, and the like? What make the Holocaust, the Rape of Nanjing, and the Genocides in Rwanda, Kosovo, and East Timor belong in a particular category of crimes against humanity, not simply the crimes of murder and rape, in spite of the facts that these crimes clearly involved murder and rape? How can international laws make claims on crimes against humanity that will have global validity? In connection with the above, crime implies a violation of law. Thus, the concept of crimes against humanity presupposes the concept of the laws of humanity. Then, what are the laws of humanity that define crimes against humanity as such? As a concept purports to “change the face of the world” and “pregnant with a complete upheaval in international law”, to borrow two metaphors from Eugène Aroneanu, Elisabeth Zoller and Norman Geras, the concept of crimes against humanity raises serious questions not only to social-political and legal philosophy, but also to metaphysics.

My objective in the present enquiry is to provide a phenomenological account of crimes against humanity that address some philosophical questions of crimes against humanity. The account is intended to demonstrate crimes against humanity as a family of inversions and offences of juridical modality, not merely a form of great moral evil. It is to demonstrate that crimes against humanity are offences to humanity as a metaphysical and practical identity of all human beings, as the supreme value of human existence, and as a species or bonded family. Evidently, what can be legally counted as crimes against humanity is defined by international and municipal statutes. A phenomenological reflection of crimes against humanity purports to offer a philosophical reflection of and a critical response to what is in law, which in turn is important to further development of legal understanding of the concept of crimes against humanity. As Vernon indicates, “law…is and should be open to powerful moral influence” (Vernon 2002, 232). By the same token, law should be open to powerful influence of philosophical reflection. Now, without further introduction, I shall start the enquiry.

I

The emergence and development of the concept of crimes against humanity bears out a timely recognition of the norms of humanity and its obligations. It implies a timely recognition that humanity is the metaphysical and practical identity of all human beings which give us normative reasons to perform certain actions and to abstain from certain action; humanity is the supreme value of human existence and humanity as a species both give us normative reasons to perform certain actions and to abstain from certain actions. It enthrones the norm of humanity as a valid and legitimate legal norm. Meanwhile, the concept of crimes against humanity invites us to review the relationships between laws and humanity, as well as justice and humanity.

Not surprisingly, the concept of crimes against humanity is part of the spirit of our time, as humankind’s self-consciousness of its humanity identity is a benchmark of the consciousness of our time. It is conceptually and normatively intertwined with the concepts of global justice, cosmopolitanism and the rule of law. The continuous institutionalization of the norm of humanity as an operating norm of our time and the
institutionalization of crimes against humanity make a benchmark of the development of the spirit of our time. While the concept of crimes against humanity is revealing of our moral experience, our focus here is on its legal dimension.

First, crime means legal transgression, inversion or subversion. The concept of crimes against humanity are not merely a figure of moral speech signifying a form of great moral evil which provokes moral repugnance, but a figure of legal speech indicating what is legally prohibited. It introduces a family of legal offences that invite a legal response of corrective justice, e.g., legal prosecution, not merely moral condemnation. Conceptually, the concept of crimes against humanity implies that the norm of humanity is a legal norm, not merely a moral norm; that there are the laws of humanity that are juridical.

The laws of humanity are cosmopolitan laws. They are embodied in international and municipal criminal statutes such as the statutes of ICTY, the ICTR, and the ICC, or municipal statutes such as statutes of various countries. Fair to say, the laws of humanity as cosmopolitan laws have moral contents. Still, the concept of crimes against humanity bears out the fact that the laws of humanity are juridical and the norm of humanity is juridical. And since Nuremberg and UN Declaration of Human rights, the laws of humanity are embodied in a functioning, institutionalized system of international laws, as well as in various municipal laws. They are democratically institutionalized rapidly throughout the entire earth.

The concept of the laws of humanity as juridical and the norm of humanity as juridical is an important development from Immanuel Kant. The norm of humanity is succinctly put forth by Kant as a moral norm. In Kant, the norm of humanity says that humanity is always a purpose in itself, not a tool only to other purpose; basic humanity including basic human dignity and rights is inviolable; “Out of the crooked timber of humanity, no straight thing can ever be built” (Kant 1923, 23; Berlin 1997, v, xi). Since Kant, the norm of humanity has been at the core of enlightened morality and ethics. Various tragedies of inhumanity in the previous and present century only remind us again and again of the Kantian insight. That being said, the statutes of ICTY, the ICTR, and the ICC, or various municipal statutes that forbid or enjoin conducts and practices under a threat of penalty in the name of humanity embody the laws of humanity as juridical laws of global justice. The birth of the concept of crimes against humanity at the down of the 20th century is one of those turning points wherein the laws of humanity as juridical and the norm of humanity as legal present themselves. In content, the concept of crimes against humanity introduces the juridical dimension to the Kantian norm of humanity. Or it develops the Kantian concept of humanity in the legal direction. In nature, the concept of crimes against humanity turns the norm of humanity from the moral into the legal. No wonder, as Judith Shklar, Richard Vernon, and various others indicate, the concept of crimes against humanity still “expressed a sense of moral outrage”(Vernon 2002, 232). That
being said, Yoram Dinstein, Geoffrey Robertson, Aroneanu, Geras and other indicate, “the emergence of crimes against humanity at Nuremberg marked a ‘revolution’, or at any rate the beginning of one in the field of international law” (Geras 2011, 16-17). Of course, as Geras and other also indicate, before Nuremberg, the concept of crimes against humanity had emerged in the Hague Conventions of 1899 and 1907. And the concept of crimes against humanity has changed the face of the earth.

From a historical perspective, the institutionalization of crimes against humanity as part of the functioning legal architecture in the globe represents a crucial turning point of human consciousness in our time: that is, the recognition of the legal obligation to humanity—the recognition of our legal obligation to give due to humanity as the metaphysical and practical identity of all human beings, as the supreme value for humankind, and as a species and bonded family; the recognition of humanity as a legitimate legal subject to which crimes must be held accountable for and a possible legal object which certain crimes can do harm; the recovery of sense that humanity is the purpose, not merely a tool to other purpose of all legally justified human acts. This humanity-turn bears out lessons which we learn from the most recent human history, in particular lessons from those human tragedies of the previous and present centuries, e.g., The Turkish genocide against the Armenians, the Holocaust, the Japanese “rape of Nanjing”, 9/11, the genocides in Rwanda, Kosovo, Bosnia, and East Timor, the glaring injustice and inhumanity in Darfur and the ongoing human destruction in the Middle East and elsewhere on the Earth. In those lessons, we are forced to ask the same question posed by the late medieval French poet Eustache Deschamps in the fourteenth century, “Why are times so dark, men know each other not at all?”(Josephson 1962, 17). In those lessons, we are forced to recognize that certain criminal acts are offenses not only to individual citizens or particular groups of civil populations, but also to humanity and humankind in whole. These criminal acts not only shock our human conscience in an unspeakable degree, but also visit humanity and humankind in whole with gross legal inversion and perversion. By this token. The emergence and development of the concept of crimes against humanity and the institutionalization of crimes against humanity as part of the functioning legal system in the globe reveals the necessity of human civilization.

The concept of crimes against humanity reminds us of the truth that when humanity is violated, justice including global “justice” is a ghost of poverty, pale and dull; when humanity is crooked, nothing really stands straight, to rephrase Kant. By this token, the concept of crimes against humanity is one of the most significant fruits of human civilization in our time. It enables us to recognize a form of legal offense in terms of the laws of humanity or the norm of humanity. It enables us to recognize that the norm of humanity is part of a functioning, institutionalized legal order and that that we are legally obliged to keep humanity standing straight; we are legally obliged to give due to humanity as the metaphysical and practical identity of all human beings, as the supreme value for humankind, and as a species or bonded family.

Second, in connection with the above, the concept of crimes against humanity implies that humanity is a possible object of legal injury, expanding our conception of possible receiver of legal injury. As “Articulated in the Judgment of the International Criminal Tribunal for the Former Yugoslavia (ICTY) in the Erdemovic case, ‘It is
Therefore the concept of humanity as victim which essentially characterizes crimes against humanity” (Geras 2011, 57). For the purpose of the present enquiry, I shall simply state here that humanity is understood here as the metaphysical and practical identity of all human beings, the supreme value for humankind, and as a species; it is the intersubjectivity of all human beings. We shall focus on the point that humanity is the victim in crimes against humanity. To claim that humanity is the victim of a crime is to claim that humanity is the harmed object or the harm receiver in a crime. Thus, the concept of crimes against humanity claims that humanity is a possible object of legal injury. By this token, the concept of crimes against humanity directs our focus to the fact that in certain crimes, legal injury is introduced not only on the physical existences of given individual persons or groups of civil population, but also, and more importantly, on humanity as an identity, a value, and a species.

Robertson also observes, “The very fact that a fellow human would conceive and commit them diminishes every member of the human race” (Robertson 1999, 220).

Geras takes a different routine of approach to the same point: “crimes against humanity terrorize us all. They terrorize … human beings in general” (Geras 2011, 59). Arendt indicates the same point when she points out that after the crimes against humanity which the Nazi has committed, “no people on earth … can feel reasonably sure of its continued existence without the help and the protection of international law” (Arendt 1964, 273; Robertson 1999, 331; Geras 2011, 59). What these philosophers say here ultimately return us back to the truth that humanity as the metaphysical and practical identity of all human beings, as the supreme value for humankind, and as the species can be criminally injured; humanity as the intersubjectivity of all human beings can be criminally injured.

The concept “metaphysical and practical identity” indicates the metaphysical dimension of crimes against humanity. As David Luban, Massimo Renzo notes, in the statutes of the International Criminal Tribunal for the former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR), and the International Criminal Court (ICC), crimes against humanity deny their victims the status of human beings’ and properly concern the whole of humanity.” (Renzo 2012, 448) Here, what are injured are as much victims’ metaphysical existence (e.g., their human statuses) as their physical bodies. What is assaulted on is not limited to the physical welfare of immediate victims (e.g., citizens or groups of civil populations), but extended to humanity as a metaphysical being.

The concept that humanity is a possible object of legal offence and injury indicates that humanity can be materially injured. That is, humanity as a metaphysical and practical identity, as a value, and as a species and communal bond can be materially injured. The qualification “materially” can mean “directly physical or proxy-physical”. For example, in policy-driven acts such as murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, humanity as an identity, a value, and a species is materially injured. Fair to say, it is impossible to quantify or empirically measure the scope and degree which
humanity and humankind in whole is materially injured by a give crime against humanity.

For example, while it can be empirically determined what particular damages are done to a given group of civil population in a crime of ethical cleansing, it is impossible to determine quantitative the scope and degree in which humanity and humankind in whole is damaged. Still, the injury which crimes against humanity introduce is not merely moral or conceptual, but material to the extent that warrants legal sanction and penalty.

For the reason above, Jürgen Habermas rightly criticizes Carl Schmitt’s claim that “when a state fights its enemy in the name of humanity, it is not a war for the sake of humanity, but rather a war wherein a state seeks to usurp a universal concept in its struggle against its enemy…The concept of humanity is an extremely useful ideological instrument” (Habermas 1998b, 188). Schmitt’s view would be correct if humanity were not a possible object of criminal injury and a legitimate legal subject. Admittedly, if humanity were not a possible object of legal, criminal injury, the concept of the laws of humanity would also be meaningless, at best would be scratching where there is no itch and at worst, would be groundless. Habermas’ rejection of Schmitt’s view would be unreasonable if humanity were not a possible object of legal injury and a legitimate legal subject. Evidentially, Schmitt is wrong and Habermas is right.

Third, correspondingly, the concept of crimes against humanity implies that humanity is a legitimate legal subject. To claim that humanity is a legitimate legal subject is to claim both that humanity imposes proper legal obligations on state, communities and citizens and that humanity is a subject to which actions are held accountable for. As Renzo indicates, humanity is not only which a crime introduces injury on, but also to which doers of certain actions and practices are legally held accountable for. Thus, Renzo argues that the concept of crimes against humanity indicates that in a crime, a criminal is held accountable and answerable not only to his/her immediate victim(s), but also to humanity itself. Benhabib, one the other hand, argues that the concept of crimes against humanity indicates that the human being is not only a being “worthy of moral respect”, but also one “having a legal status” (Benhabib 2006, 14). Needless to say, to have a legal status is to be a legitimate legal subject. The concept of crimes against humanity brings about the idea of legal entitlement and responsibility attached to our humanity identity. It makes clear that wrongdoers must account for their wrongs that they are answerable to the community of humanity (Renzo 2012. 456-457). In short, “crimes against humanity are those that properly concern the whole of humanity” (Ibid. 460). In the concept of crimes against humanity, the whole of humankind as the legal subject has claims on those wrongdoers that commit what is characterized as a crimes against humanity and is in a legal position to impose legal obligations individual persons, human communities, and nation/states in the name of humanity.
Now, the concept of crimes against humanity is conceptually and normatively
associated with the contemporary aspiration for a cosmopolitan order of global justice.
Crimes against humanity are defined by positive laws such as international criminal
laws in a cosmopolitan order of global justice as a juridical order. Conversely until it
is an order wherein crimes against humanity constitute a major category of crime, a
cosmopolitan order as a juridical order is not an adequate one. Cosmopolitan norms of
justice “signal the eventual legalization and jurisdiction of the rights claims of human
beings” on the earth (Benhabib 2006, 20). The concept of crimes against humanity is
deply rooted in the claims on basic rights of a human being and in the basic claims
of humanity in whole. A cosmopolitan order that is juridical necessarily needs a
concept of crimes against humanity. A concept of crimes against humanity becomes
substantial and meaningful in a cosmopolitan order that is juridical. Geoffrey
Robertson makes a suggestive argument for universal jurisdiction, which is at the core
of the ideal of cosmopolitanism, as follows: “There are no ‘rights’ without remedies:
equally, there are no rights without remedies for human wrongs, in the sense of
arrangements for punishing those guilty of crimes against humanity” (Robertson 1999,
203).

In connection with the above, another significant development of the spirit of our
time is that the concept of crimes against humanity makes the claim that humanity
precedes sovereign statehood or any other things. As Robertson says:

It has been the great achievement of international law, by the dawn of the twenty-
first century to lift the veil of sovereign statehood far enough to make individuals
responsible for the crimes against humanity committed by states they formally
commanded, while at the same time developing a rule that those states have a
continuing duty to prosecute and punish them, failing which another state or the
international community may bring them to justice (Ibid., 205-206).

The claim that humanity precedes sovereign statehood is a major claim of cosmopoli-
tanism of our time. It rekindles the Kantian motto: Out of crooked timber of humanity,
nothing straight can be built.

Here, the concept of crimes against humanity may invite us to revise our concept
of positive laws, in particular, those which should be legally sanctionable. At the core
of this is also an invitation to revise our concept of the object of legal harm—that is,
what can be considered to be the possible object of legal harm? Evidentially, to say
that one’s body or physical part is harmed is one thing. To say that one’s freedom,
rights or basic human dignity or identity is harmed is quite another. The concept of
crimes against humanity further invites us to revise our concept of possible legal
subject. Evidentially, to say that a person is a legal subject is one thing. To say that
humanity is a legal subject is quite another. To appreciate further the revolutionary
ramification of the concept of crimes against humanity, we shall turn to examine the
conceptual properties of crimes against humanity.
We shall now examine the nature and feature of crimes against humanity. Defined by various international criminal statutes and treaties, the concept of crimes against humanity captures a family of global crimes. David Luban singles out five features of this family of crimes:

1. Crimes against humanity are inflicted on victims based on their group membership;
2. They are “crimes committed against fellow nationals as well as foreigners”;
3. They are “international crimes”;
4. They are committed by politically organized groups acting under color of policy;
5. They “include the most severe and abominable acts of violence and persecution.”


Luban’s conception of crimes against humanity has the virtue of being consistent with how crimes against humanity are defined in international criminal statutes and treaties. It is also consistent with the human experience of our time. That being said, Luban conceives crimes against humanity mainly in terms of what they have resulted, not in terms of what motivate them. In other words, his conception of crimes against humanity is totally consequentialist. Dropping (2) of Luban’s conception of crimes against humanity above, Massimo Renzo also indicates four features of such a family of crimes: (1) “They constitute particularly odious offences”; (2) “They are international crime”; (3) “they have policy element”; and (4) “they have a collective element” (Renzo 2012, 444). Renzo then defends the following three theses:

First, crimes against humanity are those that ‘deny their victims the status of human being’. Second, crimes of this kind properly concern the whole of humanity and thus have an international dimension …Third, crimes listed in the Rome Statute and other international statutes deny their victims’ status of human being even when they have no collective element or policy element (Renzo 2012, 448).

Renzo also conceives crimes against humanity in consequentialist terms, though his main argument is that what characterizes crimes against humanity is that humanity is the legal subject to which those whom crimes against humanity should be answerable.

In light of the above, I would like to propose that crimes against humanity are a unique family of crimes that have four necessary moments:

1. Crimes against humanity are orient to assault, and focus on assaulting, victims’ basic humanity, and humanity in whole—humanity as the metaphysical and practical identity of all human beings, humanity as the supreme value for humankind, and humanity as a species; crimes against humanity are orient to attack victims’ practical humanity identity; they assault on humanity in whole;
2. Crimes against humanity are global crimes;
3. Crimes against humanity are conducted as a kind of executing a kind of anti-humanity policy; they are anti-humanity policy-laden;
(4) Crimes against humanity are not just any kind of violation of basic human rights or any kind of inhumanity; instead, this form of crimes is systematic and full range.

Conceiving crimes against humanity as above, my intention is to conceptualize crimes against humanity in terms both of their consequences and motivations, not merely consequences alone.

First, crimes against humanity are conducted to directly violate and injure victims’ basic humanity and therefore they directly injure humanity in whole—humanity as the metaphysical identity of human beings, as the supreme value for humankind, and as a species. Not only the violation and injury of victims’ basic humanity is the main motivation for such a form of crime, but also the violation and injury of victims’ basic humanity is the main cause and objective of this form of crime. The violation and injury of victims’ basic humanity and denial of victims’ basic human status in turn amount both to deny humanity as a metaphysical and practical identity of all human beings and the humanity status as the metaphysical status of a human being and to injure humankind as a species. Therefore, Hannah Arendt would characterize crimes against humanity as demonstrating “a deliberate inhuman purpose” (Arendt 1964, 256). She conceives crimes against humanity to be a kind of “crime against the human status” (Ibid, 268). Because the object of their offence is humanity as an identity, a value, and a race, crimes against humanity are profound crimes. Because they are motivated to and focus on harming humanity, crimes against humanity are voluntary, and consciously against humanity.

Thus, crimes against humanity single out a distinctive family of legal inversion that “differs from (for example) generic inhumanity and from the violation of human rights” (Vernon 2002, 232). In crimes against humanity, humanity is not just the victim, but is designated to be the focal victim; making humanity the victim is the objective, purpose, and motivation of the crimes. For example, if a group of women are deliberately raped because they belong to a particular ethnic group as part of the policy and practice against this particular group, then the crime is a crime against humanity. If a group of women are gang-raped on a Saturday night in a night club, the rape is a regular crime of rape. In the former, what is particularly and directed targeted at by the criminal(s) in the rape is victims’ humanity with their practical human identity, e.g., their ethnic identity. The rape purports to injure and deny the humanity of a particular group of women and therefore to injure humanity as a metaphysical and practical identity of all human beings, humanity as a value, and humankind as a species. In the crime, humanity is not just the victim, but is designed to be the focal victim and injuring humanity is the purpose, focus, and motivating force of the crime. In the case wherein a group of women are gang-raped in a Saturday night in a night club, the rape targets at victims’ physical bodies and the criminals are motivated to exploit the victims’ physical bodies only.

The qualification “as the main objective, focus, and cause” is crucial here. On the one hand, it underscores the emphasis on the distinction between an act or practice that focuses on X and an act or practice that simply causes X. To put it in Aristotelian term, it distinguishes between an act or practice that is due to X and one that simply
brings about X. On the other hand, it underscores the fact that the violation of victims’ basic humanity and humanity in whole as a main cause and objective is a necessary condition of crimes against humanity. To put it in a logical form, let: \( V = \) the violation of victims’ basic humanity and humanity in whole as the main objective and cause of a crime; \( C = \) crimes against humanity. We have: If \( C \), Then \( V \); Not \( V \), Not \( C \). Therefore, while all crimes against humanity are inhumane, but not all inhumane crimes are crimes against humanity. “No view of crimes against humanity that fails to take account of the violent presence of inhumanity can be morally persuasive” (Vernon 2002, 236).

In the real world, those who commit crimes against humanity are consciously motivated directly to focus on injuring victims’ practical human identity, e.g., their religious, ethnic, communal or ideological identity, instead of their metaphysical human identity. Not only the violation of victims’ practical human identity such as religious, ethnic, communal or ideological identity is the main motivation for such a form of crime, but also the violation of victims’ practical human identity is the intended, targeted result and objective of this form of crime. Arendt thus would see crimes against humanity to be “an attack upon human diversity as such, that is, upon a characteristic of the ‘human status’ without which the very word ‘mankind’ or ‘humanity’ would be void of meaning” (Arendt 1964, 268-269). Vernon indicates, “crimes against humanity strike discriminately and with an awful predictability, given that they tend to fall upon the objects of longstanding prejudice” (Vernon 2002, 236; cf Gera 2011, 36). Conversely, only if it involves the violation of victims’ practical identity as the main objective and cause of a crime, a crime would not be a kind of crimes against humanity. That is, the condition that violation of victims’ practical human identity is the main objective and cause of a crime is both a necessary condition and a sufficient condition of crimes against humanity. To put it in a logical form, let: \( VM = \) violation of victims’ practical human identity as the main objective and cause of a crime; \( C = \) crimes against humanity. We have: If \( C \), Then \( VM \); Not \( VM \), Not \( C \). That being said, violation of victims’ practical human identity is a necessary condition, but not a sufficient condition of crimes against humanity. To put it in a logical form, let: \( VM = \) violation of victims’ practical human identity; \( C = \) crimes against humanity. We have: If \( C \), Then \( VM \); Not \( VM \), Not \( C \), but not “If \( VM \), then \( C \); Not \( C \), not \( VM \).

That being said, in crimes against humanity in the form of crimes against a particular group of civil population, the crimes against victims’ basic humanity is a crime against general humanity as the metaphysical identity of the victims of crimes against humanity. Victims’ basic humanity is a manifestation of general humanity as a metaphysical identity, a value, and a species or bonded family. When victims’ basic humanity are violated, their basic rights, dignity, and human personhood are also violated and their identity as human beings are violated, not merely they as members of given religious, ethnic, political or ideological communities are violated. What we need to recover are both the concept that the violation of victims’ basic humanity and the violation of general humanity are internally associated with each other and the concept that the violation of particular groups of people’s humanity and the violation of humanity in general are internally linked.
Second, crimes against humanity are global offences against the global human community or global humanity as “municipal crimes are offences against the [municipal] community” (Luban 2004, 140). The global community of humanity refers to the global community of human beings. Global humanity here is understood as the intersubjectivity or intersubjective consciousness of the global community of human beings. Luban insists that humankind which crimes against humanity offend “refers to an aggregate of human beings, not a collective entity” (Ibid. 141). The concept of global humanity is intended to indicate that the community of humanity which crimes against humanity offends is more than “a physical aggregate of human beings”, but a community with an intersubjective consciousness or communal intersubjectivity; humanity is the intersubjectivity of the global human community in the same way American consciousness is the intersubjectivity of the nation-state called the United States of America. Thus, crimes against humanity are marked or characterized as a shock to the public human conscience of humankind. They are the gravest offense to global humanity as the intersubjective consciousness of the global human community.

The subject-matter of crimes against humanity is part of the concern of global justice. Fair to say, as indicated above, what can be counted as crimes against humanity are legally defined by international treaties such as the Nuremberg Charter, the UN 1948 Declaration of Human Rights and statutes of international law such as the statutes of ICTY, the ICTR, and the ICC, and others municipal statutes. That being said, crimes against humanity are part of the concern of global justice that defines how citizens and civil populations should be treated by communities, states or governments, not to international justice that holds how independent nations, states or communities should relate to one another.

Admittedly, so far as jurisdiction is concerned, as M. Cherif Bassiouni indicates, existing statutes that define “crimes against humanity” as such are all territorial and “as a result, one cannot say that there is conventional law providing for universal jurisdiction for ‘crimes against humanity’” (Bassiouni 2004, 52). In spite of this, claims which international laws and municipal statutes make on crimes against humanity have global validity; the contextual and territorial nature of them as legal judgment in accordance with a particular legal statute does not obscure the global nature of them as legal claims of reason and the laws of humanity. In other words, while crimes against humanity are legally defined by international and municipal statutes, these statutes make claims on crimes against humanity that have global validity. They make claims on crimes against humanity in virtue of the laws of humanity as cosmopolitan laws and global justice which gives citizens a legal status in the global human community. In short, international and municipal statutes that define legally crimes against humanity are agents of the laws of humanity as cosmopolitan laws and of global justice.

This reminds us of the distinction between global justice and international justice. International justice is concerned with relationships between nation-states, while global justice is concerned with individual citizens’ rights, humanity status, and
corresponding obligations. International justice asserts nation-states’ sovereign statehood and defend the nonviolation of nation-states’ sovereignty. Global justice claims individual citizens’ sovereignty. The concept of crimes against humanity, as Robertson puts it, “lift the veil of sovereign statehood far enough to make individuals responsible for the crimes against humanity committed by the states they formally commanded” (Robertson 1999, 205). Noteworthy, the justice which various contemporary international humanitarian interventions to stop genocides and crimes against humanity committed by given governments against their own citizens or political entities against specific groups or portions of civil population is global justice, not international justice.

One may object here that crimes against humanity are defined by international and municipal laws. How can international and municipal laws make claims on global crimes? How can their claims have global validity? My answer is a Habermasian one: that the claims of crimes against humanity are made in international laws or municipal laws indicate the context in which the claims first arise; this does not make the claims themselves be merely contextual; claims arising in specific contexts can have universal and global validity. This is what Habermas dubs as the Janus face of the claims of reason:

As claims, they transcend any local context; at the same time, they have to be raised here and now and be de facto recognized if they are going to bear the agreement of interaction participants that is needed for effective cooperation... The validity claimed for propositions and norms transcends spaces and times; but the claim is always raised here and now, in specific contexts, and is either accepted or rejected with factual consequences for action (Habermas 1998a, 322).

The claims of crimes against humanity, as claims of legal reason, have a Janus face: they arise in the context of international laws and municipal laws. But their validity is global, transcending the international and municipal contexts in which they arise. The laws of humanity in whose names international laws and municipal laws make claims on the crimes against humanity are cosmopolitan laws.

Third, in connection with the above, as Luban and others indicate, crimes against humanity are conducted to execute a kind of policy. They are policy-laden. Crimes against humanity are not just any kind of violation of basic human rights or violation of human dignity. Instead, this form of crime is conducted to execute a kind of state-policy or governmental policy that denies the humanity of citizens and the humanity of a portion of civil population. Being policy-laden in turn reinforces that crimes against humanity are intended to assault on the humanity of a particular portion of civil population.

As Renzo notes, “Crimes against humanity are considered particularly odious because they are not isolated or sporadic events, but rather part of a policy of widespread or systematic atrocities that target the members of a certain group” (Renzo, 2002, 445). Crimes against humanity differ from regular crime introducing injuries on human persons in an important aspect: injuring collectively humanity of individual citizens or the humanity of a particular group of civil population is the
main cause and objective of the crime. Offending the humanity of citizens or of a particular portion of civil population can the main cause and objective of a crime if and only if the crime is policy-laden. Offending humanity as metaphysical identity of a victim and the metaphysical identity of all human beings is a structural inversion and offense which is possible if and only if it is guided by an articulated policy. Injuring humankind in whole as a species is structural inversion and offense which is possible if and only if it is structured by an articulated policy.

Crimes against humanity are a kind of organized crime. Yet, they are not merely ordinary organized crimes such as organized human traffic, gang violence, and the like. They are a form of organized crime driven and guided by established policies that deny the humanity of citizens or particular civil groups because of their practical human identity, e.g., ethnic, religious, ideological or political. Their forms such as murder, extermination, enslavement, deportation or forcible transfer of population, imprisonment or other severe deprivation of physical liberty, rape, sexual slavery, persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender and the like carry out established policies or a policy-laden agenda.

I would like to add here that being policy-laden gives a crime not only the necessary content and structure that makes it a crime against humanity, but also an institutional resource to materialize it as a crime against humanity; therefore, it is a necessary condition for crimes against humanity. To put the matter in a logical form, let C = crimes against humanity, P = being policy-laden. We have: If C, then P; Not P, not C. Fair to say, being policy-laden is a necessary condition, but not sufficient condition of crimes against humanity. While being policy-laden gives a crime a form, the content of the crime is determined by the content of the policy that generates the crime. Thus, racism in daily is a form of practice that is policy-laden, but not a kind of crimes against humanity. The content of the policy of racism in daily life does not make it a crime. In comparison, ethical cleansing or genocide is a form of crimes against humanity. Not only ethical cleansing or genocide is policy laden, but also the content of the policy of ethical cleansing or genocide arrives at the level of crimes against humanity. All the same, being policy-laden is the necessary form and component of crimes against humanity.

Being policy-laden also makes a crime whose consequence is not measured by the consequence of an individual criminal act, but by the consequence of a policy, and the anticipated, possible consequence of a form of act. For example, the consequence of Holocaust is measured not merely by deaths of individual Jews. It is measured by the anticipated, possible consequence of the policy of ethnic cleansing of Jews population or the consequence of ethnic cleansing of any ethnic groups of civil population.

Fourth, as Luban and others indicate, being policy-laden, crimes against humanity are systematic, wide-spread crimes. Crimes against humanity are not isolated, individual violations of basic humanity. Instead, they are systematic, wide-
spread violations of humanity. Thus, the Rome Statue of the International Criminal Courts reads:

"crimes against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: Murder; Extermination; Enslavement; Deportation or forcible transfer of population; Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; Torture; Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court; Enforced disappearance of persons; The crime of apartheid; Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health (ICC, Article 7, 1).

The qualification term above is “committed as part of a widespread or systematic attack”. A crime against humanity in the ICC list is committed not as an individual or isolated attack, but as part of a systematic attack. For this reason, it is not only policy-laden, but also organized and coordinated. For this reason, I find Renzo’s argument that crimes against humanity can have no collective character puzzling and misleading.

But we will not be obsessed with the issue whether crimes against humanity have a collective character here. Suffice it to say that in content, crimes against humanity are systematic, comprehensive, and total offenses to humanity as an identity, a value, and a species; they are systematic, organized, and comprehensive assault on humanity as the intersubjectivity of all citizens. Therefore, they are generally marked by the magnitude of offenses which they produce. In scope, crimes against humanity are of full range and ramifications. In substance, they are comprehensive and of full ramifications on humanity as a metaphysical and practical identity, as a value, and as a species. Thus, crimes against humanity are not merely “generic inhumanity” and “the violation of human rights” (Vernon 2012, 232). They are profound crimes of and beyond certain level of assaulting on humanity and humankind in whole. More exactly, they are profound crimes harming humanity in full scope.

Like being policy-laden, being systematic is a necessary condition of crimes against humanity. To put it in a logical form, let C = crimes against humanity, S = being systematic. We have: If C, then S; Not S, not C. Being systematic beings about the unique nature and substance of crimes against humanity. That being said, being systematic is not a sufficient condition of crimes against humanity. There is crime that is systematic but not necessarily a crime against humanity. For example, organized crime in regular sense is systematic, but not crimes against humanity in the sense which we discuss here. Reversely, there can be no crimes against humanity that is not systematic. Holocaust is not regular murder. It is systematic murder of a particular
ethnic group of civil population. The rape of Nanjing is not regular murder and rape, but a systematic rape and murder of Chinese civil population.

The four moments outlined above can be said to be the defining moments of crimes against humanity. They explain the serious nature of crimes against humanity. “Crimes against humanity are inhumane, but inhumane acts of and beyond a certain level of seriousness” (Geras 2011, 49). They explain those practical features of such a kind of crimes, e.g., organized by a state or state-like entity, involving systematic violence, having “unforgivable brutality” (Robertson) and indescribable magnitude of wrong, shocking the public conscience of humankind, and the like. They further explain the necessity and urgency for humankind to stop such a kind of crimes. They illustrate why the concept itself is at the core of the spirit of our time and changes the face of the earth in our time. That being said, while all of these four moments are necessary conditions of crimes against humanity, each of them alone is not sufficient to define crimes against humanity as such. For this reason, I feel hesitant to call them essential moments. Not surprisingly, Vernon’s resistance to conceive crimes against humanity in terms of denying victims’ human status and injuring victims’ human dignity can be answered by the insistence that this is a necessary condition, but not a sufficient condition in its own. Geras’ attempt to add the qualification of seriousness of and beyond certain level to crimes of inhuman-ness in order for them to be qualified as crimes against humanity and his other attempts also remind us of the truth that each of the four moments of crimes against humanity outlined above alone is a necessary condition, but not a sufficient condition of crimes against humanity.

All the same, crimes against humanity are organized, systematic, policy-driven, and profound legal inversion against humanity—humanity as the metaphysical identity of all human beings, as a value, and as a species; humanity as the intersubjectivity of citizens in the global human community. They are concerns of the global human community. Therefore, they are part of the subject-matter of global justice and cosmopolitanism. Crimes against humanity share some common points with genocide, war crimes, and crimes against peace, as indicated in the statutes of ICTY, the ICTR, and the ICC. Yet, crimes against humanity remain a distinctive family of crimes in its own: as crimes, they are against humanity, not something else! They are essentially characterized by the truth that in family of crimes, humanity is the designated, focal victim.

As discussed above, crimes against humanity are global crimes. They are defined in terms of the laws of humanity as cosmopolitan and juridical laws and global justice through the vehicles of statutes of international and municipal laws. They affect and properly concern the global human community in whole. Here, we cannot talk about crimes against humanity without mentioning the laws of humanity, just as we cannot talk about crimes against humanity without affirming that humanity is a possible object of legal injury and legitimate legal subject that is entitled to make claim.
Robertson writes: “As one Nazi war crimes tribunal explained, ‘crimes against humanity … can only come with the purview of this basic code of humanity because the State involved, owing to indifference, impotency or complicity, has been unable or has refused to halt the crimes and punish the criminal’ (Robertson 1999, 208). One can also say that without the laws of humanity, no international or municipal laws can define crimes against humanity.

Historically, the appeal to the laws of humanity may be “essentially a response to a jurisdictional vacuum”, to borrow a line from Vernon, which allows states and particular groups of citizens to have free-ride to act against particular groups of civil populations in forms of murder, deportation, rape, enslavement, enforced disappearances and the like, to engage in war crimes, or to practice apartheid and the like. Today, the appeal to the laws of humanity is essentially an expression of an emerging cosmopolitan juridical order of global justice wherein humanity precedes sovereign statehood and wherein states, governments, communities, and citizens have moral and legal obligations to give due to humanity as an identity, a value, and a specie and are legally held accountable to the global human community in whole; they are legally held accountable for inversion of the human dignity, human rights, and human personhood—in short, basic humanity—of individual citizens or civil population because of their practical human identity and humanity. Since Nuremberg, the laws of humanity are part of the functioning, institutionalized cosmopolitan order anchored around the idea of basic human rights and human dignity.

As indicated above, the concept of the laws of humanity can at least be traced back to “the Martens Clause in the Hague Conventions of 1899 and 1907” (Geras 2011, 5-6). As Luban indicates, “the ‘laws of humanity’ are a recognition of the heightened danger of politics in the modern world” (Luban 2004, 139). Luban holds that the laws of humanity “are not, at bottoms, created by any political community at all, but rather by universal human needs” (Ibid). This observation may not have the truth, at least not the whole truth. As juridical laws, the laws of humanity are created by a global community of humanity, not Divine-given or nature-given laws. They are democratically established gradually in the globe. Accordingly, Luban’s view on the normative force of the laws of humanity is also flawed. According to Luban, the normative force of the laws of humanity “does not arise from the fact that they have been positivized in the statutes of the international tribunals and a few domestic legal systems, nor from the tepid commitment of states to enforce them” (Ibid). As I shall see it, the normative force of the laws of humanity arises from their legitimacy and sovereignty. Their legitimacy and sovereignty comes partially from the global democratic procedure in which they are established. That they have been positivized in the statutes of the international tribunals and various domestic legal systems is part of the global democratic procedure in which the laws of humanity are established and developed. Therefore, we should go beyond naturalism and positivism to appreciate the normative force of the laws of humanity.

Since Nuremberg and UN 1948 Declaration of Human Rights, the norm of basic human rights has be part of the functioning, institutionalized legal architecture of our time. As Robert Fine argues, “Human rights are a social form of right that has arisen in our own times and is an achievement of our age … Human rights exist not just in
the mind but as a determinate form external to our own subjective feelings and opinions of it. It has a legal status within international law and has percolated into other areas of international and domestic law” (Fine 2009, 17). On this point, while the Nuremberg Charter serves as the lead, the 1948 United Nations’ declaration of Human rights is a global treaty constructing and defining some basic human rights, and consequently, a rights-centered legal architecture. That the norm of human rights is juridical in a global scale indicates also that the law of humanity is a legal law in the globe. Seyla Benhabib thus indicates, “Since the UN Declaration of Human Rights in 1948, we have entered a phrase in the evolution of global civil society which is characterized by transition from international to cosmopolitan norms of justice” (Benhabib, 2006, 15-16). The UN Declaration has “the force of treaty law among their signatories,” institutionally defining basic human rights and rights-centered human relations in the globe (Moellendorf 2002, 5). International criminal statutes such as the status of ICTY, the ICTR, and the ICC, or municipal statutes such as statutes of various countries which forbid or enjoined conducts and practices under penalty under the name of humanity represents the law of humanity as a cosmopolitan law, at least an international law.

In light of the Nuremberg Charter, the UN 1948 Declaration of Human Rights, the statutes of ICTY, the ICTR, and the ICC and others municipal statutes such as statutes of various countries, we can conceive the basic content of the laws of humanity as follows:

1. It is legally prohibited to offend the basic humanity of citizens, the humanity of particular groups of civil population, global humanity as an intersubjectivity, and humankind in whole as a species; it is a legal obligation never to offend humanity;
2. It is legally obligatory to treat a human being as a purpose in itself, not merely as means or tools to other ends; crooking humanity is legally prohibited;
3. Every citizen, community, and state (and government), as well as the global human community, bears legal obligation to give due to citizens’ humanity identity, basic human rights, human dignity, and basic human bonds; Every citizen, community, and state (and government), as well as the global human community, bears legal obligation to give due to basic human values and human standards of existence.

Needless to say, what is outlined of the laws of humanity above is intended merely as a working map. Notwithstanding, embodied in the Nuremberg Charter, the UN 1948 Declaration of Human Rights, the statutes of ICTY, the ICTR, and the ICC and others municipal statutes such as statutes of various countries, the laws of humanity is no longer something abstract and merely regulative idea, but a law which is actionable upon. It is evident that there are the laws of humanity as cosmopolitan laws that are actionable just as there are municipal laws that make murder and rape criminal offences.

That being said, what is important for the present enquiry is that the laws of humanity have three features: (1) they are of humanity as the metaphysical and
practical identity of all human beings, the inviolability and the obligatory force of such a metaphysical and practical identity; and the legal sanctionability of offence to such a metaphysical and practical identity; (2) they are of humanity as the supreme value of human existence and the priority of this value over all other values; and legal sanctionability of offense to such a value; and (3) they are of humankind in whole as a species and legal sanctionability of offense to humankind in whole as a species. While the positive force of the laws of humanity comes mainly from those international and municipal statutes which embody them, the dignity of the laws of humanity lies in fact that they are metaphysically, ontologically, ethically, and politically indispensable for humankind to thrive as humankind. While their normative force and sovereignty comes from the democratic process wherein they are institutionalized in the globe gradually, they are cosmopolitan laws which we necessarily assume for the global community of humankind.

IV

In conclusion, crimes against humanity are part of the subject-matter of the spirit of our time. Marked with a scope of magnitude of moral evil, they designate a distinctive family of legal inversions of and offences to the laws of humanity as cosmopolitan laws and of global justice. They are offences against humanity as an identity, as a value, and as a species or bonded family. Their offences against humanity are generally manifested in forms of systematic, violent and profound violation of citizens’ humanity—basic human rights, dignity, human personhood, and the like—to and beyond certain level. As the metaphysical and practical identity of all human beings, humanity here is understood as an intersubjectivity of all human beings in the globe. Kant said: Out of the crooked timber, nothing straight can be built. We should see that out of the crooked timber of humanity, no just laws can exist.

Crimes against humanity are morally repugnant, no question of that. But they are first of all legal offences, not merely moral wrong. Their legal sanctionability lays not so much in their cruelty and inhumaneness. Rather it lays in their systematic, comprehensive, and appalling offences to the laws of humanity as cosmopolitan and juridical laws humanity and the norm of humanity as a cosmopolitan and juridical norm. That they are motivated to offend humanity and they are systematic, policy-driven and profound violations of citizens’ basic humanity to and beyond certain level vouch for their offences to the laws of humanity and the norm of humanity.

The emergence and development of the concept of crimes against humanity and corresponding international and municipal laws is a defining feature of the spirit of our time. It represents three important progress in human consciousness of our time: (1) the concept of humanity as an identity, a value, and a human bond is restored to the center of our ethical, social-political, and legal thinking, no longer marginal; (2) the rise and development of the ideals of global justice and cosmopolitanism anchored around the ideas of basic human rights and humanity; and (3) a new progress of the idea of the rule of law in the global human community. Meanwhile, the concept of crimes against humanity is still a developing concept, not a developed concept. It is
our task to constantly revise this concept in terms of the spirit of our time and of all times.

References

ROOTED COSMOPOLITANISM
AN ANSWER TO EXCLUSION AND CRIME AGAINST HUMANITY

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Abstract: Addressing the issue of crime against humanity requires a robust theory about personal attitude, politics, justice at home and abroad, as well as a true conception of human nature. The present paper contributes to this debate by emphasizing the importance of adopting a “rooted cosmopolitanism” that neither excludes wider loyalties, nor overrides the narrower ones. It is a theory that requires, not a world state, but solid democratic, and accountable states respectful of the rights of their citizens and the demands of the human person. The call for normative democracy at the global scale is motivated by the failure of politics that has been dangerously confined to the realization of local and national interests leaving aside crucial issues that engage other people and nations.

“I prefer normative to substantive democracy because of its highlighting of ethical and legal norms, thereby reconnecting politics with moral purpose and values…”
(Falk 2000, p. 171)

“A particularism that excludes wider loyalties invites immoral conduct, but so does a cosmopolitanism that overrides narrower loyalties. Both are dangerous.”

EVIL IS as old as the world. Human civilizations have provided diverse answers to the question of the origins, causes of, and remedies for evil. Reflecting in the twenty-first century about “crimes against humanity” (which include numerous kinds of inhumane and odious acts that constitute serious attacks to human dignity and integrity), gives an opportunity to re-conceptualize and sharpen our philosophical arguments which are permanently challenged by the geo-political realities of our globalized world. Crimes against humanity are no effects of our globalized world. But it is the configuration of our present world that makes those sorts of crimes more visible and people more aware of them. Crimes against humanity bear on consequences on a global scale because of the large interconnections of people and institutions. Hence, addressing these sorts of evil requires a concrete understanding of the global political arena as well as a realist conception of the human person.

Cosmopolitanism as a philosophical concept about identity, allegiance, justice, and awareness, is anterior to globalization as a political phenomenon. Cosmopolitan feelings have been throughout rekindled or even revived by crises. Debates about crimes against humanity have been taking place not only because of the continuing occurrence of human tragedies, but also and mostly because of the broad and

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widespread knowledge of those tragedies. New information and technologies play an important role by bringing people closer to those kinds of evils, thus forcing them to take stances.

In this essay, I propose to defend a kind of cosmopolitanism that is compatible with national allegiance. Along the same lines, the cosmopolitan justice that derives from it is informed by the fundamental need to (re)place the human person at the center of our concerns, not only locally, but also globally. The terms of the debate should be casted not by positing an alternative between local justice and global justice; rather, the point is to reconcile the demand of cosmopolitan justice and the fact of national allegiances by treating the former as an “institutional ideal” (Tan 2005, 165). But taking seriously into account our embeddedness, or rootedness in parochial systems should not lead us to adopt sorts of relativism that are incapable of condemning evils such as crimes against humanity, because those theories give blank check to cultures and traditions regardless their contents or qualities. Finally, the essay will discuss the issue as to whether there is a need to implement a global state in order to tackle global issues such as crimes against humanity.

I

The cosmopolitanism discourse has been in the last decades polarized around many questions among which those about allegiances, identity, values, and justice. Detractors of cosmopolitanism criticize not only its highly idealized and illusory form (Hilary Putnam, Robert Pinsky, Gertrude Himmelfarb, Richard Rorty) (Nussbaum 2002), but also its tendency to promote a sort of “a-patriotism” (the cosmopolitan is the betrayer of a nation in that he does not feel, let alone accomplish, any duty towards it.) But if those attacks to cosmopolitanism have done a great damage it is mostly because the cosmopolitan project has been expressed in so many different, and often contradictory ways and forms. Moreover, the question about the interconnections between various kinds of cosmopolitanism (moral, economic, and political) has remained insufficiently elaborated.

Cosmopolitanists are often mistakenly put before this alternative: they have to be either extreme patriots (or nationalists) or abstract world citizens. I wish to defend here one kind of cosmopolitanism that is termed by Kwame Anthony Appiah (2005, p. 222) as a “rooted cosmopolitanism,” i.e., a cosmopolitanism which “doesn’t seek to destroy patriotism, or separate our “real” from “unreal” loyalties…..” I take the problem with the theory of cosmopolitanism to be ultimately, not about its detractors, but rather about how it can persuasively accommodate local loyalties on the one hand, and deconstruct conceptual and operative dichotomies on the other hand.

Rooted cosmopolitanism is a balanced view of how we could theorize about and liven up the principles found at national and global levels. In fact, we are not only humans, but also citizens of that country, member of that community, partner in that association, and co-worker in that company. All these kinds of attachments must not be treated as irrelevant and uninteresting for the individual’s life. We may well want to think globally but most of the resources needed for a global initiative are gained through our respective parochial communities. The universal and the particular should
not be taken as antagonistic, but rather complementary. This is the sense of a rooted cosmopolitanism.

The criticism to the cosmopolitan project that it promotes rootlessness is then nullified by the option that cosmopolitans can also claim their membership to, for example, a national entity, without dealing a blow to their global citizenship. It would be mistaken to think that this position is a recent (modern?) invention. Already in the Antiquity, philosophers, especially the late Stoics (Gueye 2006), have proposed to avoid presenting the two allegiances as incompatible. The rooted cosmopolitanism advocated here is also what Appiah has expressed in this kind of manifesto: “We cosmopolitans can be patriots, loving our homelands (not only the states where we were born but the states where we grew up and where we live). Our loyalty to humankind—so vast, so abstract, a unity—does not deprive us of the capacity to care for people closer by: the notion of a global citizenship can have a real and practical meaning (Appiah 2002, 27).”

An adept of a rooted cosmopolitanism does not only consider his country of birth his homeland; he cherishes and loves every piece of land in which he has lived part of his life, made friends, and experienced meaningful encounters. For these make meaningful contributions to human lives. Denying the relevance of concrete experiences made in our concrete human lives means denying altogether our human condition. A rooted cosmopolitan is not the one who despises parochial ties; he is the one who can lean on his concrete insular life to take up challenges of the universal.

Defending the project of a rooted cosmopolitanism would then also entail expressing the virtues of national attachments. But beyond that, what is at stake is the kind of view of human nature we endorse. Remaining very sympathetic to cosmopolitanism, I strongly attribute to local attachments positive and enriching aspects that an abstract and dry cosmopolitanism alone fails to see. Cosmopolitanism needs not be incompatible with patriotism, and it is possible to be a cosmopolitan patriot. This is the view that Charles Taylor also very unequivocally defended in the following lines: “… we have no choice but to be cosmopolitans and patriots, which means to fight for the kind of patriotism that is open to universal solidarities against other, more closed kinds. I don’t really know if I’m disagreeing with Martha Nussbaum on this or just putting her profound and moving plea in a somewhat different context. But this nuance is, I think, important (Taylor 2002, 121).”

Yes, indeed, the nuance is important, even crucial. What Charles Taylor was reacting against here was the vague abstract cosmopolitanism that Martha Nussbaum emphasized in her inaugural article (“Patriotism and Cosmopolitanism”) to the book For Love of Country, in which she expressed quite general and unnuanced claims such as “we should recognize humanity whenever it occurs, and give its fundamental ingredients, reason and moral capacity, our first allegiance and respect” (Nussbaum 2002, 7).

Nussbaum will then in her “Reply” to the various criticisms of her abstract cosmopolitanism, clarify her thoughts by clearly spelling out the Stoic demand of not to give up local identifications “which can be a source of great richness in life” (ibid., p. 9): “Cosmopolitanism does not require, in any case, that we should give equal attention to all parts of the world. None of the major thinkers in the cosmopolitan
tradition denied that we can and should give special attention to our own families and to our own ties of religious and national belonging… cosmopolitans hold, moreover, that it is right to give the local and additional measure of concern. But the primary reason a cosmopolitan should have for this is not that the local is better per se, but rather that this is the only sensible way to do good (Nussbaum 2002, 135-6)."

Local attachments are important for a cosmopolitan since, besides the fact that they are real, participate significantly in our self-improvement and education to be citizens of the world. Our endeavors to serve humanity wherever it exists start at our doorsteps. It is hard to gain knowledge of our universal duties if we have not been locally trained and educated to do so. It is also hardly possible to educate citizens of the world if relevant experiences about life have not been made within the parochial communities by those very concrete human beings. That is, cosmopolitanism is no theory that promotes a dry standardization that leaves no room for diversity and difference. It is rather through diversity and difference—concrete life—that we arrive at constructing a meaningful cosmopolitanism, both in theory and practice.

II

The evocation of cosmopolitanism in the philosophical debate during the last three decades is very much connected to the idea of how global justice can be elaborated to address problems like environment, peace, immigration, crimes, etc. National means have proved insufficient to tackle issues of this scope. Here also the problem arises as to whether national or local justice (understood here as all rules, duties, obligations, and structures being embodied in the constitution or any other binding text) alone is able to provide satisfactory answers to the above-mentioned issues, or whether national or local justice has to be supplemented by a more neutral, general, and “transcendental” global justice. Another aspect of the discussion is focused also on how some exclusively domestic issues would have to be put into the test of global justice.

Hard-line cosmopolitans would suggest local justice to give entirely way to global justice. The reason for this replacement is not much that local justice is inapt to deal with social, economic and political problems than that global justice is the only kind of setting that can fully guarantee impartiality and equality, two of the most important pillars in the pyramid of justice. On the other hand, nationalists strongly believe that justice cannot be de-contextualized or uprooted under the pretext that it is the only way to comply with justice itself. Does this mean, as it were, that local justice and global justice are irreconcilable?

I believe there are some ways to account for a certain complementarity. At the same time, the possibility of reconciliation should not make us blind to the fact that there exist limits of toleration and compromise. Kok-Chor Tan poses the problem in the following terms: “if the cosmopolitan idea of justice is to have any appeal for human beings, it must acknowledge the local attachments and commitments people have that are characteristic of most meaningful and rewarding human lives.… The challenge for cosmopolitans, therefore, is to show how they can accommodate and
account for national allegiances without compromising their motivating and fundamental commitment to global equality (Tan 2005, 164).”

Tan points here one side of the challenge cosmopolitans would have to face, i.e., how an individual believing in and living up to the principles of cosmopolitanism can be justified to “say no” and turn his back to his local commitments when he judges the latter to be unjust. The other aspect of the problem is how, from a purely structural, institutional, and formal point of view, could global justice be justified to override local justice.

The dilemma in which we find ourselves facing injustice and iniquitous laws at home is the following: how great should be the terms and principles of global justice so that we decide to freely deny our local laws and “justice”? We land here in the heart of what I would call the Socrates dilemma, whereby Socrates, condemned by iniquitous laws, had to “surrender” his universal convictions, and remain an exemplary citizen of Athens. But could we call this really surrender?

A key passage, among others, to pose the Socrates dilemma is to be found in the Crito (51 b-c) where Socrates utters the following: “… in war and in court and everywhere, you must do whatever the state, your country, commands, or must show her by persuasion what is really right….” Eric Brown, trying to untangle the nods of the message, proposes two ways of understanding it: “We might understand the Laws to be saying that Socrates must persuade the city that its demands are unjust, or (failing that) obey the demands: obedience is required unless one can actually persuade the city. On the other hand, we might understand the Laws to be establishing the condition of justifiable disobedience: obedience is required only if one does not seek to persuade the city that it is unjust (Brown 2000, 83).”

Socrates did obey to the Laws of Athens. But he did so, not without pointing at the injustice these Laws were responsible for. Socrates has been brought to court, judged, condemned and executed because of the Laws of Athens, unscrupulously used by some group of people, did allow it. But the attitude of Socrates, overtly sensible to the call of moral universalism, should not denote any kind of failure or resignation in face of the unjust Laws; it extols rather the silent strength of Justice and its power to break the barriers of noisy local injustices. With Socrates the terms of the divide between local justice and global justice take another face: the triumph of Justice over local justice is not about the triumph of one individual over others. Socrates’ victory over the unjust Laws of Athens is assured already at the time when he “denounced” the iniquity of those Laws.

Civil disobedience, in Socrates’ example, is first about laying out arguments why the local laws are unjust. Even so, Socrates the cosmopolitan, does not link the fate of his cause to the retraction of the Laws. This is of a secondary importance. With Socrates the principled denunciation is to be distinguished from the actual happening or result. Here lies a potential reconciliation between the global justice and the local justice, in which one can still praise the one and obey to the other. All in all, “becoming a citizen of the world is often a lonely business (Nussbaum 2002, p. 15).” For one will be confronted with crucial choices to obey to overriding universal principles and discard local justice. But there is still a structural dimension in which the opposition between local justice and global justice arises.

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Kok-Chor Tan thinks that “one way to reconcile” the “demands of cosmopolitan justice and the fact of national allegiances” is “to treat cosmopolitan justice as an ‘institutional ideal’ that is primarily concerned with the global ‘basic structure’” (Tan 2005, p. 165). I am very sympathetic to this idea and take it to be a very plausible and reasonable way to deconstruct the either/or alternative of local justice and global justice. What cosmopolitanism as an “institutional ideal” would require is first of all the elaboration of a theoretical framework containing overriding principles that would place a crucial accent on the demands of justice, equality, respect, solidarity, and empowerment. This “institutional ideal” should play at least an inspirational role; and at the most, it should be incorporated in the basic local structures and be expressed in the operative scheme.

Cosmopolitan principles, based mainly on a high recognition of responsibility both at individual and institutional levels, are meant to have concrete impacts on individual lives and society. It is first in the mind-sets of individuals that those principles should be borne before they can be translated into concrete acts. To be a citizen of the world is first and foremost an attitude. Before turning to the point as to how a cosmopolitan justice can be an appropriate answer to crimes against humanity, it is useful to briefly recall some features of crimes against humanity.

III

A cosmopolitan justice is constituted by a bundle of principles the practical translation of which should not make us oblivious of its deep philosophical-anthropological basis and justifications. It is in these mainly that we should seek reasons why a cosmopolitan justice can be the appropriate answer to crimes against humanity. In the first place, though, we try to list basic understandings of crimes against humanity.

The question as to whether/when a crime becomes crime against humanity is rendered complex by the different understandings of the word “humanity”. Depending on whether we mean by “humanity” the “human race”, or the “quality of being human”, we can end up putting different accents on the criterion of “number”. If humanity means the human race, we can be confronted with various qualifications of crimes as crimes against humanity:

1. A crime that involves a considerable number of victims (genocide, mass-murder, deportation, etc.) can be serious candidates to be qualified as “crimes against humanity”.

2. When humanity is understood as a group, or a family (human family), a crime becomes a crime against humanity also when a member of this group is attacked. With this understanding the criterion which helps qualify a crime as a crime against humanity is the “belonging” of the victim to the human family.

3. Crimes are crimes against humanity when they participate in disrupting the human family, for example, by eliminating one or many of its members.

Since a crime involves in general a victim, a perpetrator and a plaintiff, in this first understanding of crimes against humanity, it is the human family that is the
plaintiff. Formally this complaint can be “filled” by institutions representing the people, or the international community.

But if we understand by “humanity” the “quality of being human”, then a crime against humanity would entail:

1. A crime whose odious character is in complete contradiction with the way a human being should act. A crime against humanity would then be an inhuman crime;
2. A crime that defies all principles of reason;
3. A crime that attacks the dignity of the human person.

In this understanding of crime against humanity, it is even legitimate to ask whether there is no redundancy or pleonasm when we use the words “crime” and “against humanity”. Are not all sorts of crimes absolutely “crimes against humanity”? Isn’t the quality of being human strictly forbidding acts such as crimes? Isn’t it against human nature to kill?

For Larry May (2005) group-based crimes are crimes against humanity since those crimes treat their victims as members of a group, denying in this way their humanity as persons. Moreover those kinds of crimes constitute real threats to peace and security. Hence we need not only to have an adequate and true conception of the human person, but also to bear in mind the consequences crimes against humanity can have in the immediate and global environment. The human person is not reducible to his membership to a community. He is bearer of intrinsic value (dignity) for being a person tout court (Ricoeur 1988, p. 236.) This dignity, which elsewhere Josef Seifert (1997, pp. 101-6) calls ontological dignity, is rooted in the being of the person, in its essence. It is not at the level of acts and accidents, but at the level of person’s essence and substantial nature. This dignity is inalienable in that it is rooted not in the functionality of a person, but in her being a person.

There is, in my opinion, a third ground why a group-based crime can amount to a crime against humanity: the inherent vulnerability of the human person. As a matter of fact, the idea of crime against humanity needs to be put in connection with a realistic view about the human person. As persons we are all vulnerable, in one way or another. And what befalls to one can well befall to others. A crime against groups then becomes a crime against humanity because other groups can also be victims of such crimes. The perpetrators of crimes against humanity use arbitrary arguments and they have only personal or ideological motivations that run counter the demands of the human person: respect for human life and dignity.

It is important to emphasize that some versions of normative moral relativism stipulating that morality is throughout culture-bound and that right and wrong are neither universal nor absolute (but depend on culture) constitute potential ideological justification of any evil. Boosted by the anthropological observation of the fact of diversity of cultural customs, traditions, and practices, and disagreements over self-evident moral truths and values, normative moral relativism denies any objective truth and forbids any transcultural standard. “In the folkways”, says Sumner (1906, p. 28) “whatever is, is right”. Hence those two principles: “morality is relative”, and “we should not judge other cultures”. Normative moral relativism is the doctrine that forbids any cross-cultural evaluation. It claims that it is morally wrong to interfere with the moral practices of others who have different moral codes and traditions than...
our own. By forbidding interference and cross-cultural evaluations this version of relativism has no ground or justification to condemn violations of human rights and crimes against humanity. Making morality dependent on cultural traditions is a way to give blank check to anarchy and abuses on the human person.

Facing the challenges of global evil in general and of crimes against humanity in particular, philosophical debates have been centered around the question as to whether we need a global state (or any other kind of global entity) to take up those very global challenges. Is a global state necessary for taking up global challenges such as crimes against humanity?

IV

Hannah Arendt’s cosmopolitan ideas arose out from the historical background of the Nuremburg trial where the guilt of “crime against humanity” was first uttered. Preferring to speak rather about “crime against human condition”—because human nature cannot be known, Arendt holds that there are actions such as crimes that should be denounced and condemned wherever they occur and irrespective of the laws of the country in which they are perpetrated. For Arendt our personal responsibility goes beyond the walls of the nation-state. As humans we are responsible also for others. Human condition is a universal given and is also to be understood within the idea of one single world. “Whether we like or not” writes Arendt (1979, p. 297), “we have really started to live in One World.” Arendt calls then for an awareness of a global responsibility that guarantees the sustainability of the human condition.

Arendt’s cosmopolitan thought is also closely related to an understanding or “sense of history.” For her, a parochial or compartmental analysis or view of history is not able to provide humanity with a total grasp of history in general, and unprecedented events in particular. Only a world historical sense can judge an event. This global perspective is fundamental to successfully and efficiently anticipate new events, and it provides durable solutions to human life, existence, and history. History is not either to be understood as being constituted by sequences which are independent of each other, but rather as a whole whose parts are interrelated. Grasping the sense of history is tantamount to linking the events which can seem sometimes so unrelated.

As much as she sees the need to restore awareness and responsibility to fight against and condemn crimes against human condition, Hannah Arendt is not in favor of the establishment of a global state. Arendt worries are less in the inefficacy of such global state than in its power to wipe out local citizenship. The ideal of world citizenship should not replace the reality of local citizenship. This also resonates with Karl Jaspers (1953) for whom world citizenship cannot provide the human being with the same advantages and “possibilities” as local citizenship. Indeed “nobody one can be a citizen of the world as he is the citizen of his country.” The need for mankind to unite around the big questions and take up the challenges of global disasters and evils should not necessarily lead to the implementation of a sovereign force (global state) that would trample on individual states and their citizens. Arendt (1968, p. 81)
develops this thought further: “no matter what form a world government with centralized power over the whole globe might assume, the very notion of one sovereign force ruling the whole earth, holding the monopoly of all means of violence, unchecked and uncontrolled by other sovereign powers, is not only a forbidding nightmare of tyranny, it would be the end of all political life as we know it. Political concepts are based on plurality, diversity, and mutual limitations.”

The fears ending up with another kind of totalitarianism with the implementation of a world government are very much justified. A world government would mean for Arendt the end of citizenship. Even facing the horrible faces of evil, mankind should not be tempted to wipe out difference and diversity by putting into place a monstrous ogre that would devour our rights and obligations as citizens of particular states. At this point it is interesting to note that the failure of politics can also be at the source of not only the idea of implementing a global government, but also the occurrence of crimes against humanity. When politics fails at a local level, there is the risk that unlawful states engage into crimes and odious acts against some groups. As David Luban (2004, p. 108) so clearly states it: “the leitmotif binding together all the legal features [of crime against humanity] is that of politics gone horribly wrong.” A state exercising mass murder and genocide for example deprive its citizens from all means of protection. Actually it is even a contradiction in terms when a state—which is supposed to provide security to its citizens—uses its machineries to exercise unjustified and unjust violence on a group of its citizens. The recent history is full of examples which show how the state’s collapse can be detrimental to its citizens and neighboring countries. The Rwandan genocide which took place in 1994 and which has led to a death toll of almost a million of people, was significantly supported by the national government using its local military, civil officials, and media. The idea of implementing a global state can also be the result of a failure of politics, when the latter is strictly confined to the realization of local and national interests leaving aside crucial issues that engage other people and nations.

If, according to Arendt, global government is no solution to counter crimes against humanity, it is legitimate to ask for an alternative. Arendt (1968, p. 83) sees solidarity, a positive one, as one of the remedy to the evil. Mankind needs a “positive solidarity coupled with political responsibility.” She is up against the cultivation of a “negative solidarity, based on the fear of global destruction” which can lead to “common reactions” such as “political apathy, isolationist nationalism, or desperate rebellion.”

Martha Nussbaum (2011, p. 114), in view of the implementation of her Capability Approach, likewise discards the idea of a world state. A “world state” she states, “were one ever to come into being, would probably be very unsatisfactory from the point of view of human autonomy, because it would be too insensitive to the diverse views of people from different experiences and traditions.” What interests us here is less the rejection of a world state that the alternative proposed instead. Nussbaum (ibid., pp. 121-2) proposes then a “thin and decentralized institutional solution” consisting in nations ratifying international agreements in major areas of human capability. Such solution would also mean the involvement of existing nations as well as the establishment of a “network of international treaties and other
agreements” that “can impose some norms on the community of nations, while corporations and nongovernmental organizations can also play a part in promoting human capabilities in the regions in which they operate.”

In the search for solution as to how to eradicate crimes against humanity, it is useful to strengthen the role of democratic states which can guarantee full respect for human rights; at the same time, it is necessary to draft treaties and agreements which should be followed by the erection of international courts responsible for judging authors of crimes against humanity. But, absent appropriate education of the people, these efforts can prove insufficient. It is the people themselves who can put into place solid democratic states respectful of the rights of citizens and demands of the human person. Furthermore, nongovernmental organizations have the task of helping with not only the awareness of the people, but also the monitoring of human rights abuses and crimes of all kinds. A synergy of action is needed with in its basis a responsible citizen and a solid democratic state. The offer of democracy is to be made to non-democratic states, but not at the expenses of local differences and traditions that can well be compatible with it.

There is number of scholars who think that not only democracy should be promoted beyond the individual states to the global level, but also that even some decisions—those engaging the lives of others—taken within those states can only be democratic when those others are taken into account. As Archibugi (1998, p. 204) states in this example: “A decision on the interest rate in Germany has significant consequences for employment in Greece, Portugal and Italy. A state’s decision to use nuclear energy has environmental consequences for the citizens of neighboring countries. Immigration policies in the European Union have a significant impact on the economic development of Mediterranean Africa. All this happens without the affected citizens having a say in the matter.”

We seem, indeed, to be living in a world which is so global that practically no course of action can be isolated. Whether this is a solid ground to cease qualifying decisions taken locally as democratic remains questionable. For I believe rather that the challenge rests on the way we can inculcate awareness and sense of responsibility into state citizens so that, while taking decisions or voting locally, they also take into account the others who will be affected by their decisions. Focusing on acting locally is not in itself a wrong attitude, provided that consequences on a global scale are known and seriously taken into account. That requires that citizens are correctly, truthfully, and objectively informed about the global situation and how their decisions are going to affect some of the “remote” others. Politics should then neither be reduced to crypto-national interests, nor subordinated to the whims of international lobbies and multinational; politics should rather be open to global issues and put in place platforms for local citizens to be “trained” to think globally.

This is all the more important in issues such as crimes against humanity. For the sake of preventing such atrocities which, even if perpetrated locally, do cause incalculable global pain, consternation, and suffering, it is crucial to have educated citizens capable of monitoring states’ actions and respectful of the rights of their fellow citizens. Those rights, made explicit by and embodied in constitutions and various legal treaties and agreements, find their ultimate justification and foundation...
in the human person as a thinking, rational, and free being endowed with an inviolable substantial dignity that is to be respected.

V

By way of concluding, I assert that the world of uncertainties and risks (Beck 2007) in which we live requires, not a world state, but solid democratic, and accountable states respectful of the rights of their citizens and the demands of the human person. It also needs responsible, educated, and respectful citizens who are capable of taking seriously into account the preoccupations of the “remote others.” That is, a cosmopolitan awareness of each individual is primarily needed before the implementation of any global constituency that would be taking charge of global issues such as those relating to environment, economics, politics, etc.

A cosmopolitan justice, then, largely based on an objective conception and understanding of justice as a body of principles that enable a sustainable and peaceful life in accordance with respect for the human person, should not command the implementation of a world state. Rather, it requires a synergy of actions and initiatives from institutional structures both at the national and international levels. These structures should play not only preventive roles, but also they should be capable of bringing to justice authors of those hideous crimes against humanity.

There is no need to discard local allegiances since these can serve as springboards to realize the cosmopolitan goals and ideals. As Van Hooft (2009, p. 43) rightly states it: “The ethical commitment of a cosmopolitan is to human rights and global justice. Because the cosmopolitan’s own country has a role to play in the pursuit of human rights and global justice both in its internal policies and in its foreign policies, she pursues her global ethical concerns through the political processes of her own country and therefore has a pragmatic commitment to those processes.”

References


EXTENDING RESPECT TO ALL HUMAN BEINGS:
A PERSONALIST ACCOUNT

John F. Crosby

Abstract. I start from the ancient Greek distinction between “Greek” and “barbarian,” which seems to express an inveterate, incorrigible way of thinking about other human beings. People who are cast into the role of “barbarians” are exposed to violence and injustice at the hands of the “Greeks.” They are deprived of a certain moral protection; the “Greeks” can with a good conscience commit crimes against humanity as long as humanity is thought of as “barbarian” humanity. I then ask how we as philosophers can overcome the Greek-barbarian way of thinking, and how, at the level of philosophical reflection, we can protect people from being degraded to “barbarians.” I argue that we can raise a strong intellectual bulwark against all such degradation if we think of the encounter with others in terms of personalism. I develop the personalist distinction between “environment” and “world” and I show why it is that through our world-openness we destroy the aspect of others as barbarians. I also consider and reject a plausible “cosmopolitan” misunderstanding of my “personalist” way of extending respect to all human beings.

IN THE Republic of Plato Socrates says, “I affirm that the Hellenic race is friendly to itself and foreign and alien to the barbarian.” He continues, “we shall then say that Greeks fight and wage war with barbarians, and barbarians with Greeks, and are enemies by nature, and that war is the fit name for this [natural] enmity and hatred” (470-c). He proceeds to say that when civil war breaks out in Greece, so that Greeks have to fight against each other, the victors will take care to impose moderate punishments on the vanquished, always having an eye on their eventual reconciliation. He sharply contrasts this humane way of waging war with the way Greeks wage war on barbarians, where fierce punishments and inflicted and no thought is entertained about any ultimate reconciliation. From this passage we see that Socrates does not envision a moral realm encompassing all peoples and all human beings. The moral realm is only the Greek world; Greek is naturally at peace with Greek, so that it is an unnatural disorder when they engage in civil war, just as it is unnatural when brothers or sisters do violence to each other. But with Greeks and barbarians it is different; they are naturally hostile to each other; their natural relation is not peace but war. Socrates has no idea of one human family, all the peoples of which owe the same respect to each other.¹

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²In this paragraph and in the following few paragraphs I use, slightly modified, the opening paragraphs of my 2005.
Though most of us take offense at this Greek provincialism, as we could call it, we should not forget how “natural” it is to the human mind, nor should we forget how difficult it is for human beings to embrace imaginatively the idea that they form one human family. The French anthropologist, Claude Levi-Strauss, is surely right when, writing soon after the second World War, he observes that the concept of an all-inclusive humanity, which makes no distinction between races and cultures, appeared very late in the history of mankind and did not spread very widely across the globe. What is more, as proved by recent events, even in the one region where it seems most developed, it has not escaped periods of regression and ambiguity. For the majority of the human species, and for tens of thousands of years, the idea that humanity includes every human being on the face of the earth does not exist at all. The designation [of humanity] stops at the border of each tribe, or linguistic group, sometimes even at the edge of a village. So common is the practice that many of the peoples we call primitive call themselves by a name that means “men”...thus implying that the other tribes, groups, and villages do not partake in human virtues or even human nature, but are, for the most part, “bad people...” “human monkeys...” (Levi-Strauss 1983, 329)

We human beings even find ways of making distinctions among our own kind that in a way re-introduces the Greek-barbarian distinction among our own. These distinctions, too, have the effect of exposing to violence those who fall on the wrong side of them. Let us return to Plato’s Republic, to the passage where he develops his famous parallel between the different classes within the city-state and the different levels of the individual soul. With respect to the city-state he distinguishes between the many human beings who are fit to be ruled and the few who are fit to rule, and with respect to the individual soul he distinguishes between the unruly appetites of the soul and the power of reason in the soul. Then he draws out the parallel like this: just as human appetites need to be ordered by reason, since they have no rational principle proper to themselves, so those fit to be ruled, also having no rational principle proper to themselves, need to be ordered by the natural rulers. It is, then, no wonder that for Socrates these natural rulers have a nobler, more divine kind of soul, which he expresses metaphorically by saying that they have gold in their souls, nor is it any wonder that for him the ruled have a more based kind of soul, which he expresses by saying that they have brass and iron in their souls. The consequences that he draws from so fundamental a difference between human beings are also not surprising. In one place (Republic, 460-c) he says that when those of base soul procreate, it will often be necessary to dispose of the child by exposing it as soon as it has been born. He shows by contrast much more solicitude for the offspring of those of noble soul. So in addition to the distinction between Greek and barbarian, Plato drew a similar distinction that divides some Greeks from other Greeks, namely the distinction between those possessing reason in their own right and those who have reason imposed on them from without. Both distinctions have the effect of imposing a kind of moral disenfranchisement on the inferior group.

This deficiency is in no way remedied by Aristotle; the distinction between superior and inferior Greeks is simply perpetuated through his concept of the “natural slave,” that is, the human being who “participates in reason to the extent of
apprehending it in another though destitute of it in himself.” Aristotle infers that those who have this limited share in reason are by nature capable of becoming the property of another, and in fact occupy their proper place in the world only by being owned as slaves. And so, we have over against the Greeks the barbarians, and among the Greeks the natural slaves: in each case the range of those who count as fully human is further narrowed: in the first case the real humans are limited to the Greeks, and in the second the really real humans are limited to only certain Greeks.

It is well known that Christianity broke with this Greek provincialism. St. Paul famously said: “There are no more distinctions between Jew and Greek, slave and free, male and female, but all of you are one in Christ Jesus” (Gal. 3:28). All human beings, having the same father and the same redeemer, have equal access to the one human family. And yet even where people have long professed, and sincerely professed, the Jewish or the Christian faith, the old Greek provincialism has lingered on. Here is an example.

When the Spanish entered the New World in the early 16th century they inflicted great violence on the native peoples they encountered. Many of the natives were taken by the Spanish and used as slaves. One has only to read the history of the great 16th century Dominican, Bartolome de las Casas, who is known as “the great gatherer of Indian tears,” to see the appalling proportions of the wrong done to the native Americans by the Spanish (Sullivan, 1995). But worse even than the wrong done was the justification sometimes offered for it. In 1550 there was a famous debate in Spain on Spanish colonial practice between Bartolome de las Casas and a certain theologian by the name of Gines de Sepulveda, who defended the policy of making war on the native peoples. In the course of his defense he invoked the Aristotelian concept of natural slave, arguing that the native Americans were so primitive and degraded in their way of life as to be just the kind of being that Aristotle had in mind. He said that they were as far below the Spaniards as monkeys are below human beings. It was, then, only right that they should be subjugated by the Spanish, and subjugated by force if they should offer resistance. The Christian faith of this defender of Spanish colonial practice had not yet given birth in his mind and imagination to an understanding of the unity of the human family. He still distinguished between real and quasi human beings. In this way he was able to justify crimes against the native Americans that were condemned by Bartolome de las Casas, whose more vigorous Christian imagination was able to grasp the full belonging of the native Americans to the human family.

It would be superfluous to show how the failure of these Spaniards has repeated itself in our time and on larger scales. The Greek-barbarian dichotomy seems to be almost ineradicably rooted in our thinking about others; and even those who, like Christians, have good reasons for surpassing it, often remain caught in it.

II

Our question is this: how can we, working not at the level of Christian revelation but at the level of philosophical reflection, overcome the inveterate habit of thinking of ourselves as “Greeks” and of people outside our group as “barbarians”? What are the
truths about the human being that have to be affirmed and taken to heart if we are going to extend a fundamental respect not just to our tribal fellows but to all human beings?

I take my cue from a significant fact about the debates at the United Nations in 1948 that led to the Universal Declaration of Human Rights. Apparently an impasse was reached in those debates when the Western countries who wanted the declaration to focus on the individual could not reach agreement with the Eastern and communist countries who wanted the declaration to focus on the community, or even the state. What broke the impasse was the introduction of the concept of person. “Person” seemed to the one side to be sufficiently expressive of the individual and seemed to the other side to be sufficiently open to the communitarian dimension of man. I want now to see if in the setting of our present discussion the recourse to the concept of person might not once again be of service. In what follows I will propose a personalist account of human beings; I will try on a personalist basis to dismantle the Greek-barbarian contrast.

III

At first glance personalism seems to offer very little of what we need. For some ears personalism sounds like individualism. A person seems to them to be mainly an individualistic subject of rights. The first aspect under which he encounters another is as potential intruder; the first thing he wants from another is to be left alone. Such a person thinks of himself as unconnected with others except to the extent that he enters into agreements with others; his ties to others are contractual; as with all contracts these ties can be dissolved. In terms of the contrast between Gesellschaft and Gemeinschaft this individualist is a creature of Gesellschaft. He knows nothing of the solidarity by which people are bound together in a Gemeinschaft by ties that are prior to and more fundamental than all contractual ties. If personalism is just another name for this individualism, then it is, in relation to the problem of setting Greeks against barbarians, part of the problem rather than part of the solution. It would seem to cast others outside of my moral domain, and to let them in to it only by the tenuous tie of contract and agreement. All those outside of my contractual world are in danger of becoming for me “barbarians.”

And so it is all-important to understand that personalism as I take it has nothing to do with such individualism. If personalism were individualism, then the recourse to man as person at the UN in 1948 could have never accomplished the work of mediation that it in fact accomplished; it would have just led to the hardening of the conflict between East and West. In his book Personalism Emmanuel Mounier, after describing this individualism, says that individualism “is the very antithesis of personalism, and its dearest enemy.” He goes on to unpack the radical interpersonal structure of personal existence according to personalism: “if the first condition of individualism is the centralization of the individual in himself, the first condition of personalism is his decentralization, in order to set him in the open perspectives of personal life.” And he says: “Other persons do no limit us, they enable us to be and to grow. The person only exists thus towards others, he only knows itself in knowing
others, only finds himself in being known by them. The thou, which implies the we, is prior to the I...” Then Mounier thinks through what results from a deficit of interpersonal life: “When communication fails or is corrupted, I suffer an essential loss of myself: every kind of madness is a severance of my relations with others–alter then becomes alienus, and I in my turn become a stranger to myself, alienated. One might almost say that I have no existence, save in so far as I exist for others, and that to be is, in the final analysis, to love” (Mounier 2001, 19-20). This reminds us of what Martin Buber says on the first page of I and Thou: if I take the other always only as It and never as Thou, then I can never be in the relation to the other with my whole being (Buber 1958, 3).

If this personalist account of intersubjectivity is correct, then we are in a position to strike a blow at the Greek-barbarian dichotomy. If each person exists towards other persons, and for them, and through them—if in other words personal existence is signed by this radical interdependence and mutuality of persons–then it can never be right to cast most other human beings in to the status of “barbarians,” to break moral solidarity with them, to put them “beyond the pale,” and to feel at liberty to do them violence.

But the question arises how it is possible for us to achieve that decentering of the self that opens up for us the world of intersubjectivity. To attempt an answer to this question let me introduce the personalist distinction between environment and world, and let me explain what is meant in saying that man as person exists as a world-open being. This personalist thesis throws much light on our capacity to extend respect to all other persons.

IV

Personalists such as Scheler (1962) and Buber (1966) have distinguished environment and world as two realms in which human persons dwell. My environment is constituted when I approach my surroundings using my needs as a principle of selection; I notice just those things in my surroundings that promise to fulfill some need or that threaten to block the fulfillment of some need; whatever in my surroundings has no bearing on my needs, is ignored and does not enter into my environment. Thus anything that could serve as food or shelter is prominent in my environment, to start with the most elementary needs; predatory animals are also prominent. My needs, from the most elementary ones to the most refined ones, are the measure and the center of my environment, and are reflected in its makeup. What the things in my surroundings are in their own right and apart from my needs, is of no interest to me and thus finds no place in my environment. As environment-bound beings we humans are like the conscious animals, who also occupy an environment.

But we do not live only in an environment, nor do we differ from the conscious

2Josef Pieper has also discussed the distinction in his 1963, pp. 83-96, and I have discussed it my 1996, pp. 161-173.

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animals only be living in a more complex environment than they live in. We also live in another realm altogether, a realm to which the conscious animals have no access: we are “world-open” beings. Personalist thinkers usually characterize our world-openness in two ways. First, they say that we open to the world when a sense of the whole of reality awakens in us. This opening does not mean that we thematize the whole of reality in the sense of talking explicitly about “God and the world”; our sense of the whole is usually present as a frame of reference. For example, when we form the concept of environment, as we just did, and think of it as one realm in which we live, and then ask whether there are also other realms, we are asking on the background of “all possible realms in which a being can exist,” which expresses an unsurpassable whole. An environment-bound being does not wonder about its environment as a realm of its own and ask what might lie beyond it; by asking like this—and asking even before an answer is found—we have already passed from its environment into the “world.” The second characteristic of our world-openness is intrinsically bound up with this sense of the whole: we are able to take an interest in things in their own right. Our power of taking an interest is no longer dominated by our needs; it is now de-centered; it can be captivated by the otherness of things. Instead of measuring things by our needs, we let ourselves be measured by them. We release things from our pragmatic grip and let them appear before us as they are. What something really and ultimately is can be understood only by inserting the thing in its place in the whole, and so this “objectivity” that we aim at as world-open beings, awakens in us that sense of the whole that also characterizes us as world-open beings. We human persons live in both realms—not only in our environment, but also in the world. The matter-spirit duality of our being is expressed in the fact that we are citizens of both of these realms.

The concept of world-openness is a personalist concept, because the capacity of a person to take things in their own right is rooted in the person’s interiority or subjectivity. It is just because a person is gathered into himself and exists out of an inner personal center that he can turn outward to the point of taking an interest in things in their own right. We find here a polarity of subject and object such that the depth of subjectivity makes possible the reach of objectivity. Only beings that possess themselves as persons do can take an interest in what things are in their own right. Only personal subjectivity enables us to take a distance to things such that they present themselves “from themselves” and on their own terms. Beings that are entirely embedded in their environment have a weaker subjectivity; they are not gathered into themselves like persons are. They can only encounter things through the prism of their needs.

This point is so important for our purposes in this paper that I would like to cite Josef Pieper’s way of explaining it. He claims that we can discern a certain “inwardness” in every living being; even the most elementary living being lives out of a center. Pieper proceeds to say that the stronger the inwardness of a being, the greater the reach of the acting of the being. Thus a conscious animal has a vaster reach than a simple plant, for the very reason that the inwardness of the conscious animal is stronger than that of the plant. “The more encompassing the power with which to relate oneself to objective being, the more deeply that power needs to be

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anchored in the inner self of the subject so as to counterbalance the step it takes outside.” Turning to the human person he says:

And where this step attains a world that is in principle complete (with totality as its aim), the highest possible form of being established in oneself, which is characteristic of spirit, is also reached. The two together constitute spirit: not only the capacity to relate oneself to the whole of reality...but an unlimited capacity of living and being in oneself, of standing in oneself as a being of one’s own—the very traits which, in the philosophical tradition of Europe, have always been ascribed to being a person. To have a world, to be related to the totality of existing things, can only be the attribute of a being whose being is within itself—not a “what” but a “who,” a self, a person. (Pieper 1963, 90-91)

One we see the personalist structure of world-openness, we see the bearing of environment and world on the question of how we can avoid treating others as “barbarians” and can extend respect to all other persons. “Barbarians” exist for us insofar as we live in the environment. Other people are constituted as barbarians for us when we approach them with the question, who is a threat to us? But as soon as we de-center ourselves, and let others appear before us as beings existing out of their own center, as beings that surprise us with their own originality and their otherness, we exercise our world-openness towards them. And with this we have eliminated the aspect of the barbarian in the others. The reality of the others now makes itself felt too strongly for us to degrade them to the level of barbarians.

Consider the rich description that we find in Romano Guardini. He describes a way of encountering another as “a center of resistance, as material to be used, as a constructive opposite to oneself, or something of the kind. In such an approach to the other I do not take him as the being who stands in himself and forms the center around which everything in his world is ordered; instead I refer the other to myself as to the only center to be taken account of, and I use the other as a tool for achieving my goals.” This is an encounter with the other that is typical of the environment. Guardini proceeds to describe the personalist transformation of this encounter. “The first step towards the other as ‘Thou’ is that movement which means ‘hands off’ and clears the space in which the person’s capacity of serving as his own purpose can be realized...Personal love begins decisively not with a movement toward the other but away from him...I release the being which at first I regarded only as an object, and consider it as a self meeting me from its own center, permitting it to become my ‘Thou’...”(Guardini, 1965, p. 127). In other words, I de-center myself in the spirit of world-openness; as a result the other emerges before me as having a reality comparable to my own reality. This makes it impossible for me elevate myself above him as Greek above barbarian. 3

3In his book The View from Nowhere Thomas Nagel seems to aim at what we are calling the world openness of the person. But we differ from him in that we do not think, as he thinks, that the exercise of our world-openness always objectifies, as if the most emphatically world-open approach faces a world of objects. The description of Guardini shows how through the power

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There is something in the life of the personalist philosopher, Dietrich von Hildebrand, that makes the point very concretely. In the 1930's he was active in Austria as a leader of the resistance to Hitler. He often expressed his regret that the Church would sometimes wait until the Nazi regime would encroach upon its property, or upon the freedom of its schools, or would commit some crime against a priest, and only then raise its voice against the regime. He said that the crimes committed say against the Jews should weigh on the Christian conscience no less than the crimes committed against Christians. He thought that the Church was not speaking with its full prophetic voice until it condemned all the Nazi crimes against humanity and without any special preference for condemning the Nazi crimes against Christians. He even said that if Hitler were to be extremely respectful of Christians but otherwise remain the criminal that he was, the Church should not relent one iota in bearing witness against him (Wenisch, 1994, pp. 252-253). We might say that von Hildebrand was speaking out of the abundance of his world-openness and was troubled at the Christian voice being muted by the spirit of the environment.

This is why he had a greater ability than many of his contemporaries to extend respect to all human persons.

But there is a certain “cosmopolitan” misunderstanding of world-openness that should be avoided. Sometimes one says that any and every special preference for one’s own family and one’s own people gives evidence of the sub-personal spirit of the environment, and that the world-openness of persons has the effect of undermining all such special preferences and of making us experience all others mainly as “fellow human beings.” That would be a depersonalizing way of understanding world-openness, and we would thereby be prevented from claiming the mantel of personalism for our attempt at explaining the extension of respect to all human persons.

Why do I speak here of depersonalization? Just consider how it is that I myself appear within the cosmopolitan setting of which I speak. I am just one of 7 billion human beings; I am not the center of the world; I am adrift in a space that has no center. My subjectivity is bracketed out and I appear from the “view from nowhere” as one object among innumerably many objects. The reason why I cannot take any special interest in my family is that I cannot take any special interest in myself. I count as one and only one, as Bentham said, and my child counts as one and only one, neither more nor less than anyone else. It is true that I cannot raise myself above others as if they were barbarians; but for this I pay a price of depersonalization, since I have become interchangeable with others. I have become an infinitesimally small of our world-openness we can awaken to others as personal subjects. More on this important point in the final section of this paper.

\(^4\) Of course, von Hildebrand did not think that the Christian churches were restoring the Greek-barbarian dichotomy. I mention him here because the same world-openness that underlies his criticism of the churches also strikes at the root of that dichotomy.
EXTENDING RESPECT TO ALL HUMAN BEINGS

This is not the world-openness that reveals other persons in all their otherness. This is not the way in which von Hildebrand extended his respect to the Jews of his time. Those who think of themselves as “one among many” do not have the experience described by Guardini, the experience of another emerging as “someone in his own right.” For as I just explained in the previous section, the power of world-openness is rooted in the subjectivity of the person who is open. This openness to others as they are in their own right is born of a strength of subjectivity, not of a bracketing of subjectivity. Only if I am alive at the center of my world can I turn to others in the spirit of world-openness. It is not enough to be counted as an object; I have to live as a subject, that is, to live my being from within myself. Everyone knows that it is wrong to objectivize other persons, but not everyone is equally alert to the fact that it is wrong to objectivize oneself. The deceptive appearance that one is practicing “altruism” by objectivizing oneself can obscure this latter wrong. The “cosmopolitan” mentality which I resist abolishes the barbarian by making everyone into an object, even oneself; the world-openness that I defend abolishes the barbarian by taking account of everyone as personal subject, even the other.

Of course, there are certain settings in which we are right to make ourselves just “one of many” and think of ourselves by means of arithmetic, as when we deal with issues of distributive justice. In distributing benefits and burdens in the political community I really should just count as one and only one, and my child should not count for more than someone else’s child. But this distributive fairness does not reveal the person in the way in which my personalist approach reveals it. It regards persons in relation to each other, whereas my approach takes them absolutely, that is, it takes each as she lives out of herself.

Perhaps one will say that the assertion of personal subjectivity for which I am pleading returns us to the environment, and that we surpass the environment and dwell in the world only by cancelling out personal subjectivity. But surely this is a false alternative if ever there was one: either environment-bound self-centeredness, or the abolition of the personal self. Every real I-Thou relation makes manifest the falsity of this alternative, for as Buber says I am present “with my whole being” in the relation in which I encounter the other as other. I break out of my environment-bound self-centeredness towards the other, but I do so “with my whole being” and not by annulling my own being.

My way of extending respect to all human persons should not, then, be confused with the “cosmopolitan” way of achieving this result. This personalist approach does not discredit special commitments to certain people, such as to my own children or to my own people. These commitments simply show that I am alive as personal subject, not that I am doing some wrong to those for whom I do not have the same concern. It is true that I show myself here as personal subject by the fact that my children have an importance for me that other people’s children do not have, but this for me does not have to be the self-centeredness of the environment. For consider that every parent needs to discern in his or her children beings who live out of their own center; every

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5These reflections grow out of chapters 1-3 in my book, The Selfhood of the Human Person.
parent has to know how to let his or her children go so that they can become themselves. Thus parents have to practice that other-revealing world-openness towards their own children no less than towards their fellow human beings. At the same time, parents with a world-open spirit are enabled to be sensitive to non-family members as beings in their own right; they can refuse to think of other people’s children simply as threats to, or aids to, the flourishing of their own children, but can honor them as persons who live out of their own center. They can refuse to commit any injustice against other children. Thus it is that the world-open spirit of parents affects the way they relate to their children and to their non-children, but it does not affect it in such a way as to make parents relate in exactly the same way to their children and to their non-children. The world-open spirit leaves intact the special claim that children have on their parents.

I conclude, then, that personalism has the resources for explaining that de-centering of myself that opens me to the other in such a way that the other is never a barbarian. “De-centering” is indeed vulnerable to being taken in the depersonalizing sense of me existing as “one of many” in a kind of space-time grid. By explaining “de-centering” in terms of environment and world, we can understand it as the way of entering into a kingdom of persons.

References

Abstract: This paper consists of four parts: (i) The first part develops a phenomenological description of power as an interpersonal relationship of influence of a human being over some other human being and aim to show that the two fundamentals of any ethics of power are the respect of the recipient of the relationship – which is a human dignity endowed with a dignity - and the intentional and transcendent character of the relation itself. (ii) The second part is dedicated to the question why power is a temptation for man, namely the use of power can easily turned into abuse. (iii) The third part inquiries hatred as that specific temptation of power which can motivate some human being to perform criminal acts against humanity. (iv) The fourth and final part of the paper aims to summarize the different moral responsibilities of any human being in the fight against genocide and other crimes against humanity.

ETHICS AS a philosophical investigation can start from the experience of different types of phenomena: the everyday life and the issues raised by social facts, education of children, profession and personal relationships; or it can inquiry the great dilemmas that make man to face decisive choices, difficult to be solved and with important consequences, like some political, legal and bioethical questions. But one area in which ethical reflection really comes to its grounds is when the goods or evils involved are extremely serious and crucial. In particular, those facts which reveal the horror of the most evident and radical injustice, and are so wicked that any attempt to minimize them or justify their authors appears as nonsensical and impossible, provoke moral philosophy to inquiry why man can turn into a monster for his fellow men. The attacks against the dignity of man that for their relevance and extension are called "crimes against humanity" are one of these phenomena. These crimes are the most shocking for their range, especially if you count how many victims have caused over the past 100 years: the number of human beings who have undergone this kind of atrocity is probably greater than the sum of all victims killed by violence throughout all the previous human history: several dozens of millions of people in different parts of our planet have lost their lives because of genocide or other types of extermination; and the number of people who have been injured, tortured, maimed or have experienced some form of physical or moral violence is much bigger.

As mentioned by Josef Seifert in this volume, in 1996, shortly after the genocide in Rwanda, the President of Genocide Watch, Gregory Stanton, presented a paper on ‘The 8 Stages of Genocide’ at the United States Department of State (Stanton 1996). Stanton argues that genocide develops in eight states that are “predictable but not
inexorable”. Consequently, the international institutions should take into account these stages to take preventive measures against this crime.¹

In this paper, I would like to argue that to prevent genocides and other crimes against humanity, one should not only study how one ethnic group or some political system gets from the stage 1 to the stage 8 indicated by Stanton, but must also understand why someone gets to be in the stage 1. It is evident that the formation of a favorable environment for the development of crimes against humanity depends on many historic, economic, political and social conditions. These tragedies usually happen in countries in which there are unstable political situations, conflicts among different ethnic, religious or political groups, widespread poverty, easy access to weapons, and the rulers do not oppose to the use of violence. To prevent crimes against humanity, all these conditions must be investigated by the experts of the corresponding disciplines so that effective remedies to them can be planned by national and international institutions.

The philosopher, however, can also give his contribution by inquiring on the question of why the human being, who may be the seat of the higher feelings, the most heroic sacrifices and wonderful creative works of arts, can also get to pursue so tremendously destructive projects against humanity. The question of why people get to commit crimes like genocide, depends on the question, very easy to be asked, but deeply mysterious to be answered, of why man does evil.

Genocide and crimes against humanity can in fact be seen not only as phenomena in themselves, with an unspeakable relevance and extent, but also as a paradigm of the evil that man, any man, can do. We specifically refer to that kind of evil that is called moral evil: that evil which is not a simple ontological deficiency or a material imperfection, but is manifested in human actions and religions call sin. Max Scheler (2000 [1921], p. 229 f.) says that moral evil must have its source in an intelligence which is less perfect than that of God – since he is the Good in itself –, but more perfect than human intelligence: therefore evil must stem from a person who is metaphysically intermediate between God and man and has the power over the world. Man alone would not have been able to come up with something as perverse as the evil that has taken so horrible and shocking semblances throughout our history. In front of the list of the crimes against humanity that have marked the recent history, Scheler’s analysis seems to find some arguments which can confirm it.

¹According to Stanton the stages that lead to genocide are: 1) classification, in which people are divided between "us" and "them"; 2) symbolization, where hatred leads to force others into some labels and symbols; 3) dehumanization, in which one group denies the humanity of the other; 4) organization, in which special militias are trained and armed; 5) polarization, in which groups animated by hatred organize a specific propaganda; 6) preparation, in which the victims are identified and isolated from others; 7) extermination and 8) the denial of crimes committed. Only historical investigation can confirm whether these stages were followed by all the genocides of the past and present time. We can just say that there are exterminations in which this was the case. To give just one example, the beginning of the Holocaust in the Ukraine by the Nazis, under the indifferent eyes of Stalin, which is reported for instance by Greg Dawson (2009) clearly developed in these phases.
Nevertheless, my intention is not to address the issue of the metaphysical source of moral evil. I would like to inquiry the question of why one group of human beings, is pushed to raise his hand over his fellows, in a manner so determined, systematic and deliberate, to plan and execute genocide or a mass violence on another religious, ethnic or political group, considered as different and enemy.

It seems to me that this issue can be addressed by inquiring four essential aspects. First, one should investigate into the structure of interpersonal relations and in particular of power relationships, namely those in which one or more human beings have the power to affect other people, forcing them to do or suffer something. Only if you know the essential elements of this relation, you can answer the question if there is a good and a bad use of power and if there are criteria to distinguish between the two. Second, one should search the reasons why power can be a temptation for the one who has it, and lead to carry out actions based on the abuse of power. Third, one should try to inquiry into that temptation which leads to desire the destruction of other human beings and to plan collective actions to pursue this purpose. Finally, one should consider the question of moral responsibility in these kinds of actions and in the prevention of them.

I. Human Power as an Interpersonal Relationship

Any human action in general involves some power, since action can be defined as the human act which produces some effect in the external world. The phenomenon of power that interests us is that particular human acting that involves affecting other people. Unlike the power of man over nature, this power requires the interpersonal relationship.

In his masterpiece on social philosophy, Dietrich von Hildebrand (1975 [1930], pp. 23-29) provides a detailed analysis of the degrees and types of relationships that can be established among human beings. He says that the interpersonal relationship always starts with a social act. Adolf Reinach, one of the earliest and most brilliant students of Husserl, who died during the First World War, defines social act as a conscious act carried out by a subject, therefore intentional (always has a content) and spiritual (immaterial), but that, differently from other intentional relations, has another person as its recipient and some content that is shared by the two partners. (Reinach 1983 [1913]. See also Falcioni 1991; Dubois 1995). Examples of social acts are promise, command, questioning. The presence of another subject as a recipient implies that the social act finds its fulfillment when it is understood and answered by the recipient: the other person can become aware of the act, grasp its meaning, and respond with another social act.

A social act can turn into an interpersonal relationship in the proper sense when is reciprocated. A declaration of love that the recipient does not understand or refuses does not produces a relationship, while a declaration to which the beloved responds in turn by declaring his love, is the prerequisite for allowing a love relationship to start. The relationships may then be between peers, such as friendship and spousal love, or between two persons who stay on different levels, like in love between father and son.
and in the relationships between teacher and pupil, or between employer and employee (Hildebrand 1975 [1930], p. 29; see also Premoli De Marchi 2013).

We can apply Hildebrand’s analysis to the power relationships, that is, as mentioned, to those relationships in which a human being affects other human beings. This relationship may be reciprocal, for example, two people connected by a true friendship acquire both the right and the duty to give advice to the friend and listen to his advice, by virtue of the love and trust that is between them. Each of them therefore has a power over the other one. Or the relationship may be unilateral. Even between two friends, for example when one is very dominant and the other has a weak character, the power relationship can go only in one direction. There are relations of power that are of this kind by their essence, as that between ruler and the citizens, father and son, official and soldier. The asymmetry in these cases involves the obedience of those who are "under" to those who are "above".

Hildebrand also adds that there are two opposite kinds of interpersonal contacts. On the one hand, some relationships as love and other relationships which contain at least a core of love, like veneration, esteem, reverence, joy, imply a “mutual look” which can bring about a real union among persons. They establish relations in the strict sense, links among the persons involved because the two share some common values and recognize each other in their personal dignity. On the other hand the human contacts marked by hate never cause true relationships because they essentially involve separation and make true bonds among persons impossible. (Hildebrand 1975 [1930], ch. 9).

The power relationship is cross over to the distinction between benevolent and hostile relations: there are loving power relations, motivated by the value of the other and based on common values, such as an authentic relationship of paternal love or between master and disciple, just as there are power relations characterized by hatred, bitterness and division, such as that between an extremely authoritative father and his children or a despotic and unjust teacher and his students.

The crucial question, then, is whether the power relationship can be indifferently benevolent or hostile, or if the power should, by its nature and meaning, be carried out in favor of the other, and therefore the power relations based on hatred, conflict, violence, contradict the essence of man's power over man. To answer this question it is necessary to determine whether the power of man over man can be exercised to any purpose, or it assumes its meaning only when it pursues a certain type of goal.

Anselm of Canterbury in his dialogue On Truth writes that "we do not will anything at all unless there is a reason why we will it" (Anselm 2002, p. 23). Like every human action, also the actions of a powerful person require a purpose: the ability of the person with power to affect or to obtain obedience from others requires that he has a purpose. Carl Schmitt (1954), for example, identifies the reason of obedience with the possibility of offering protection to those who obey. This reason can well explain the relationships between lord and vassal, father and son, ruler and citizen. For this statement to be true in any case of human power, however, a very broad meaning must be attributed to the term "protection", because the obedience of the patient to the physician who prescribes a therapy is very different to that of the soldier to the general, that of someone who follows an advice of his brother, or that of
a child to his parents. Furthermore, there are many power relationships in which there is not obedience in the strict sense, but a more general kind of influence, like in the case of two friends that decide together where to spend their holidays. However, Schmitt seems to understand that the power relationship only makes sense if pursues a good for the person who is subjected. Power has no sense as an end in itself, nor if it has as its purpose the mere subjugation and domination of others because in both cases the personal character of the recipient and his value in itself is not considered.

We can then conclude that the possibility to affect other human beings does not have a moral positive or negative connotation in itself. Its moral quality stems by two elements: a) the purpose for which one affects the other man, that is the object of the power relationship, and b) if the addressee of the relationship is respected in its nature as a subject, then as a being capable of knowledge and free decisions.

The first essential aspect of the power relationship, then, is that it has an intentional and transcendent character. All power only makes sense in virtue of something else than by power itself: the object of the power of parents over children is the children's education and personal development, the power of the ruler over citizens aims to keep the peace and prosperity of the country; the power of the physician over the patient consists in the protection of life, restoration of health, fight against pain, etc. (see Seifert 2004, ch. 1); the power of teacher consists in the development of the person, the transmission of culture, preparing for a job, etc. Power is always "of" something, and this something is different from power itself. If we accept Aristotle's identification of "end" with "good" we can then say that any form of power is justified and finds its ethical limits in the goods that this power is called to serve.

The second essential aspect of the power relationship is the recipient of the relationship. In the power relationship he or she must be always taken into account in his/her personal dignity as a conscious and free subject. Obviously the consideration of the freedom of those who are subjected to a power relationship may vary depending on age, type of relationship and other contingent conditions. However, even when he or she is a newborn whose parents have to take care or a terrible criminal who must be punished by the law, they must anyway be respected in their dignity as a human being. This implies, first of all, to respect the principle already formulated by Kant, according to which to have a dignity means having an intrinsic value but not a price: all rational beings have in themselves the right not to be exploited and to be always an end and never simply a means to get something done (Kant 2012 [1785] ch. II, p. 46).

The most important moral imperative in the power relationships is then the prohibition of exploiting those submitted to power, treating them as objects and not as persons. Those power relations that include obedience may involve a moral obligation to obey on the part of the subjected, but this duty is never absolute and unconditional, for he who obeys is a subject endowed with moral dignity and moral conscience. On

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2In the informal power relations, such as the influence that a friend can have on the other one, there is no moral obligation of obedience in the strict sense, unless specific acts such as the promise to make a favor to a friend are added to the relation.
the other hand, those with power have the moral duty to respect the just mentioned moral imperative, not to objectify those under their power.  

II. The First Three Temptations of Power

We can now turn to investigate into the kind of motivations which drive the man with power to disregard the goods that should be the goal of his actions, and instead to use his position to do evil or even to pursue criminal purposes.

On this regard it is very interesting the analysis made by Vaclav Havel, who was playwright, dissident of the communist regime, protagonist of the Velvet Revolution, first President of the Czechoslovak Republic, and then, after the division Slovakia, of the Czech Republic. Now, concerning the issue of power and the use of violence are especially interesting the writings of Havel as dissident, above all the famous The Power of the Powerless, and the speeches that Havel wrote as President. These works reveal an extraordinary ability to investigate into the motivations that animate the man of power, as well as the attraction that the possession of power exercises on those who possess it, detaching them from their true mission.

In a speech Havel delivered in May 28, 1991, in Copenhagen, when he accepted the Sonning Prize for his contribution to European civilization, he seeks to answer the question why people long for political power and, when they have achieved it, are so reluctant to give it up. He answers that people can be driven into politics by three reasons: first, the desire to turn into reality their ideas about a better way to organize society, because they believe in certain values; second, the desire for self-affirmation, to leave they mark on the world and enjoy the respect which is bestowed upon who has power; and finally, the desire to enjoy the perks that are a necessary part of the life of men with power. He then observes that normally powerful men repeat to themselves and to others to be solely driven by the first motivation and they “care not

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3 When the power relationship is based on a legitimate authority it assumes a formal, institutionalized character, which may involve a stronger obligation to obedience on the part of those who are subject to the power. Also in the relationship between rulers and citizens, however, the duty to obey may be suspended if power is not exercised for the common good, but it is an excuse to dominate and oppress the citizens or to serve evil or criminal purposes. As already outlined by Seifert in his article, in this case, the subjected men have even a moral obligation to oppose power, even if this imply some sacrifices.

4 Havel did not receive an academic philosophical training, but was fascinated by the thought of Jan Patocka ever since his student days, and absorbed his view through the friendship that bound the two till Patocka’s death. Patocka was one of the last students of Husserl and absorbed by the master, besides the interest in the world of nature, also the principle that inspired the realist phenomenology, expressed in Husserl’s Logical Investigation, as a call to “return to the things themselves.” In Havel we encounter several themes dear to phenomenology, such as the critical attitude to the scientist and technicist attitude of the modern man, and which makes man incapable to listen to the "world of life", namely to what is typical and characteristic of the human. But Havel also shown a particular sensitivity to the phenomenological analysis, namely to the analysis of human acts and the objects to which these acts refer.

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about power as such but about certain general values”. But in reality the other two are temptations that no powerful man can escape: self-affirmation is an intrinsically human need, and cannot be eliminated, although it is not morally negative in itself; while the attachment to the benefits that power brings with itself is more insidious, because it easily leads to be accustomed to it so that one cannot live without power any more.

It seems to us that this analysis indicates three risks of those who have power, and especially a great political power, corresponding to the three types of motivation: a) the risk of deceiving ourselves about what is the common good, as is the case in systems that sacrifice the attention to reality in favor of a partial and ideological view of man, b) the risk of turning the exercise of power into a frantic race to find one’s own exaltation and celebration; and c) the risk of pursuing, through power, only one’s own personal interests, such as to gain wealth. In this sense, all the three motivations involve a temptation: taking a step further than Havel, we call these the first three temptations of power.

When a man of power surrenders to these temptations, he makes a common mistake, which is to forget that intentional and transcendent character of power that we already mentioned. Max Scheler in his Essay on Politics and Morality (1990, B II) criticized Nietzsche’s will to power exactly for this reason: any power searched as an end in itself is senseless. Now, when the man of power, at any level of the hierarchy he may be, forgets this reference of power to something else, he ceases to pursue the common good, and begins to exercise power for his own personal gain. But this, as well highlighted by Havel, has a boomerang effect: the so aimed power, instead of liberating the powerful man and giving him more capacity to influence others, takes over the man of power, who becomes the slave of his own power. Havel says:

There is something treacherous, delusive, and ambiguous in the temptation of power. On the one hand, political power gives you the wonderful opportunity to confirm, day in and day out, that you really exist, that you have your own undeniable identity, that with every word and deed you a leaving a highly visible mark on the world around you. Yet within that same political power and in everything that logically belongs to it lies a terrible danger: that, while pretending to confirm our existence and our identity, political power will in fact rob us of them. [...] There is something deadening about this temptation. Under the mantle of existential self-affirmation, existence is confiscated, alienated, deadened. A person is transformed into a stone bust of himself. The bust may accentuate his undying importance and fame, but at the same time it is no more than a piece of dead stone. (Copenhagen, 28 May 1991)

If we apply what said to the question of crimes against humanity, we can assume that when those with political power forget the end of their public office is to achieve a good that transcend their immediate benefit and the mere statement of their individual vanity, they open the door to the possibility to forget also the dignity of those who are subjected to power. Still, we see that the three temptations are not sufficient to explain the abuse of power and even less the resort to violence. It is also possible that those who yield to the temptations of power and begin to exercise it mainly to affirm
themselves or to keep the benefits that power brings, are very valuable men of power, truly able of pursuing the common good. It is however important to consider that power is something that attracts and fascinates him, and therefore can distract him from the transcendent purposes that constitute its real meaning, because to surrender some of the listed temptations may be the first step to some worse abuse of power, as the use of soft drugs can be the first step towards the consumption of the heavy ones.

III. The Subjective Reasons Why Human Being Can Desire to Perform Crimes against Humanity

To understand what can transform the man of power into a cruel tyrant we need to inquiry a second issue, that is which is the source of morally evil actions. Dietrich von Hildebrand says that there are two sources of the moral evil in man: pride and concupiscence. The first is the illegitimate self-glorification of oneself, which leads to put himself on a pedestal and replace the hierarchy of moral values with a new hierarchy, built according to one’s own image and likeness. The second source, on the other hand, is to be carried away by the attraction to what is pleasant, and this leads man to be overpowered, in the control over himself, from his impulses. These two sources can be found in two of the temptations we have already seen: the man of power is always threatened by the danger to pursue his self-affirmation instead of the common good – and in this case he becomes prey of pride –, or to be seduced by the benefits resulting from his office – and in this case he becomes prey of concupiscence.

It seems, however, that also Hildebrand’s analysis of the sources of moral evil is not sufficient to explain the abuse of power, and especially that outbreak of violence that leads to deliberately kill and torture hundreds, thousands or millions of other human beings.

IV. Anger as temporary Madness with Destructive Effects

As regarding power, some philosophers considered a particular passion, which is anger. The ancient Latin philosopher Seneca, for example, has devoted a masterful analysis on this issue. At the beginning of the work, he writes that anger is “the most hideous and frenzied of all the emotions”, for it is “wholly violent and has its being in an onrush of resentment, raging with a most inhuman lust for weapons, blood, and punishment, giving no thought to itself if only it can hurt another.” And then he continues:

Certain wise men, therefore, have claimed that anger is temporary madness. For it is equally devoid of self-control, forgetful of decency, unmindful of ties, persistent

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5 Hildebrand 1953, p. 441 says: “Concupiscence refers to a having; pride to a being. Concupiscence is a perversion in the sphere of the possession of a good; pride is a perversion in the attitude toward one’s own perfection. In concupiscence man renounces his birthright, as it were, for a mess of pottage; in pride man arrogates to himself a right that is above him; he exalts himself in an illegitimate way.”
and diligent in whatever it begins, closed to reason and counsel, excited by trifling causes, unfit to discern the right and true—the very counterpart of a ruin that is shattered in pieces where it overwhelms. (Seneca 1928, I, I, I-4)

According to Seneca, anger is the plague which “has cost the human race more dear”, since it caused bloodshed, poisoning, downfall of cities and whole nations, “the gatherings cut down by the sword, the populace butchered by soldiery let loose upon them, and whole peoples condemned to death in common ruin” (Seneca 1928, I-II, 1-5). He defines anger as the desire to punish someone who offended us, as a desire of revenge. Even though all human beings share this passion, Seneca says that it opposes man’s nature.

Whether [anger] is in accordance with nature will become clear if we turn our eyes to man. What is more gentle than he while is in a right state of man? But what is crueler than anger? What is more loving to others man than man? What more hostile than anger? Man is born for mutual help; anger for mutual destruction. The one desires union, the other disunion; the one to help, the other to harm, one would succor even strangers, the other attacks its best beloved … (Seneca 1928, I.V, 2-3)

Seneca observes that since anger can be useful, for example to rouse the spirit in war, someone suggested to control it, not to banish it. But he replies that all the passions tend to replace the reason from its ruling role in man. Therefore anger one should not accept anger, but must fight it as soon as it arises within oneself, because “it is easier to exclude harmful passions than to rule them, and to deny them admittance than, after they have been admitted, to control them”, and “when they have established themselves in possession, they are stronger than their ruler and do not permit themselves to be restrained or reduced.” Then,

reason herself, to whom the reins of power have been entrusted, remains mistress only so long as she is kept apart from the passions: if once she mingles with them and is contaminated, she becomes unable to hold back those whom she might have cleared from her path. (Seneca 1928, I.VII, 1-2)

Seneca’s analysis can enlighten the role of anger in the desire of revenge which usually is a motivation for the violent crimes and also for those against humanity. Nevertheless, it is still insufficient to explain these kinds of crimes only as surges of anger on a large scale. Genocide, mass rapes, as well as the torture of thousands of innocent people, cannot be explained simply as phenomena of collective irascibility. What these phenomena reveal is something deeper and more perverse, namely the diffusion of a profound and persistent hatred of some human beings to other human groups. We can therefore add a fourth temptation which can threaten the man of power, which is hate.
V. Hate as the Fourth Temptation of the Man of Power

The most important difference between anger and hatred is that anger is a passion, something which arouses in man against his will, while hate is a response of the spiritual center of the person, which causes a lasting “taking position” to someone else. Hate is also a social act which produces a particular kind of human relationship, as we have seen, because can be between two or more persons, but does not really link them; rather it involves extraneity and separation among men.

We find a very acute analysis of hatred in a speech Havel read in Oslo, the 28 August 1990, entitled *The Anatomy of Hate*. Here he describes some characteristics of those who hate, which can be summarized as follows.

First, those who hate are not passive or indifferent, but are driven by a “permanently unfulfilled and unfulfillable desire, “a kind of desperate ambition.” Hatred leads the person to fixate on an object, to point to it in an invincible way. In this hatred has a lot in common with love, because it implies a self-transcending aspect, “the self-fixation on others, the dependence on them, the delegation of a piece of one’s own identity to them”. Just as the lover longs for the beloved, also the hater longs for the hatred and cannot get along without him. (Havel, Oslo, 28 August 1990).

Then “like love, hatred is ultimately an expression of longing for the absolute, albeit an expression that has become tragically inverted.” We might add that hate leads to extreme consequences the second motivation of the man of power, mentioned in the previous section, i.e. the desire to affirm oneself and one’s own identity.

Second, those who hate maintain a permanent and radical feeling of injury, out of all proportion to reality. The one who hates want to be honored, loved and respected in an infinite degree, as if he suffered "from the chronic and painful awareness that others are ungrateful and unforgivably and unjust” towards him. Like anger, also hatred stems from a feeling of injustice, and it is perceived as a justified response to an injustice.

Third, haters have a subconscious feeling that they alone possess the truth, as if they were superhuman or divine, and therefore deserve the recognition by the world, “even its complete submissiveness and loyalty, if not its blind obedience”. Those who hate, in short, “want be the center of the world and are constantly frustrated and irritated because the world does not accept and recognize them as such.” They are, in other words, like spoiled and self-centered children who feel as a personal attack when their mother does something else than pay attention to them.

In addition, hatred includes a desperate longing to what is impossible to attain, as well in the unhappy love. Havel writes:

Hatred is a diabolical attribute of the fallen angel. It is a state of the spirit that aspires to be God, which may even think it is God, and is tormented by evidence that it is not and cannot be. It is the attribute of a creature who is jealous of God and eats his heart out because the road to the throne of God, where he thinks he should be sitting, is blocked by an unjust world that is conspiring against him. (Havel, Oslo, 28 August 1990)
From this stems, we could say as a fifth feature, the fact that he who hates does not consider to be limited and fallible. If a failure happens, it is always caused by the outside world and therefore must be objectified in some particular offender to hate. This person can change, but always has the same role: to represent the complex of obstacles “to absolute recognition, absolute power, total identification with God, truth and order of the world”. It is therefore not true that hatred stems from an inferiority complex. On the contrary, it is based on the “fatal perception that the world does not appreciate the true worth” of the one who hates. Besides, the one who hates is a very serious person, does not smile, just grins, and do not tolerate irony. Havel said that “only those who can laugh at themselves can laugh authentically. A serious face, quickness to take offence, strong language, shouting, the inability to step outside himself and see his own foolishness these are typical of one who hates.” This reveals something very important, namely that the hater “lacks a sense of belonging, of shame, of objectivity”. The inability to understand their limits, his own faults, is a sign of a “tragic, almost metaphysical lack of a sense of proportion.” Therefore:

The hateful person has not grasped the measure of things, the measure of his own possibilities, the measure of his rights, the measure of his own existence and the measure of recognition and love that he can expect. […] He does not understand that the right to the miracle of his own existence and the recognition of that miracle are things he must earn through his actions. He sees them, on the contrary, as a right granted to him once and for all, unlimited and never called into question. In short, he believes that he has something like an unconditional free pass anywhere, even to heaven. Anyone who dares to scrutinize his pass is an enemy who does him wrong. If this is how he understands his right to existence and recognition, then he must be constantly angry at someone for not drawing the proper conclusions. (Havel, Oslo, 28 August 1990)

The person who hates, Havel concludes, is unhappy because he spends his existence to destroy those he thinks responsible for his lack of recognition, but he never reaches the absolute success he desires. This description, evidently the result of the experience made by Havel under the totalitarian regime, already helps us to understand the attitude of the person who decides to use the power through violence, with the intention to destroy those he considers as enemies. But one can hate without using violence against the hated people. The passage to the destructive hatred, of which genocide is the most extreme example, still requires some investigation, which we’ll show a fifth temptation of power.

VI. The Eros of Destruction as Fifth Temptation of Power

In a recent essay, the Italian philosopher Silvano Petrosino (2010) has tried to answer the question of why man does evil and offered a solution that sheds interesting light on our topic.

He argues that man has various impulses, among them also a tendency to destroy, which he calls Eros of destruction. This impulse is triggered when a person is in a
situation of severe need and suffering and, in an attempt to resolve this situation, identifies someone else as responsible for his discomfort. This identification can have an objective cause or be completely groundless. But the very fact that the person finds a scapegoat can lead to unleash the destructive impulse: if one believes that the situation can be solved only by eliminating the other, the only way out is to destroy so-called enemy in the most complete and definitive as possible way. The other is found guilty, then every act of destruction against him is perceived as inevitable and justified, due to the emergency situation in which they are located.

This analysis allows us some further considerations on the question of the temptation which lead man to use power for criminal purposes.

First, who falls prey to destructive impulse is placed in the situation of the ruler who goes to war: he is convinced that the ethical rules that apply in time of peace may be suspended, and new rules can be established, in which the restriction of other’s freedom, the judgments without trial and the use of force, all things that are illegal in time of peace, become legal. The use of violence which is illegitimate in time of peace, in war becomes justified as an extreme remedy to extreme conditions.

It is important to note that this attitude does not stem simply from a predominance of concupiscence, which blunts the ability to reflect and to oppose evil with the will. Unlike the evil done because of weakness of will, what comes out of this destructive impulse implies the use of reflection, deliberation and determination. This role of calculation and intentionality can lead to a destructive effect far more systematic, large and long-term than a simple outburst of anger.

At the same time, the Eros of destruction has also an irrational element, like any passion. Like all passions tend to gradually oust the man from his self-control, to become more and more violent, to mitigate the moral inhibitions that show the horrible face of evil, to dominate and produce a destructive effect exceeding what the person initially meant to do.

As Seneca called anger a “temporary madness”, one might find also in this process irrational and even psychopathological elements, for example in the disproportionate use of violence as compared to the circumstances, in the sadism of those who feel pleasure in front of other’s pain, and in the false perception of reality when others are identified as enemies. However, it would be superficial to believe that such pathological elements are sufficient to make not imputable the actions of those who become the prey of the Eros of destruction. Hildebrand has aptly described the spheres of influence of liberty, by distinguishing between direct, indirect and cooperative freedom. (Hildebrand 1953, pp. 300 ff.). Faced with the rise of a pulse any human being can resort to his direct freedom as the capacity to take position against the temptation to use violence; then he can resort to the indirect freedom to promote conditions which help to oppose the destructive instincts, for example avoiding acquaintances that may incite to violence; finally he has the cooperative freedom, that is the capacity to oppose and disavow himself from the Eros of destruction that he feels in himself. Seneca already understood the importance of fighting anger from its first signals, before that the will lose any power on passion.

The description of the process by which man comes to destructive behaviors towards his neighbor may well explain several violent crimes: the husband who kills his wife's
lover, the employee who removes his boss to rob him, the kidnapper that subtract a child to his family for ransom. It seems, however, that can also be used to understand why the man can get to make crimes against entire groups or populations. Even in these cases criminals show a great egocentrism, and victims are considered as wicked, so their elimination is seen as the only way to restore a situation of justice and peace. The most important prevention against the Eros of destruction, then, is to fight hatred as a perverse attitude of the heart towards the other human beings.

VII. The Collective Hatred as Cause of Crimes against Humanity

The decisive step that can lead to the decision of taking the path of violence is when many people share the same attitude of hatred and at the same time have or are able to obtain sufficient power to implement their criminal intentions. Crimes against humanity are never made by one person. They assume their monstrosity by the fact that more people together plan acts of violence and deliberately bring them to an end. Like Aristotle and Seneca, also Hildebrand recognized that the human being is essentially ordered to live in a community in which he can develop all his personal qualities. Therefore, those interpersonal relationships which are able to link people in communities are necessary not only to satisfy some elementary needs that man alone cannot satisfy, but also for the full actualization of the spiritual capacities of each member. Hildebrand observes that while the relationships between two individuals have a “I-Thou” character, the relationships among people in communities have a “We” character: the individuals do not look each other, but look at a common object and are part of a totality. They can also act together as authors of the same actions (Hildebrand 1975, p. 36). This analysis can help to understand that also in the power relationships there can be groups of people who share the same purposes. And when they are driven by hatred, these purposes become destructive.

In the aforementioned speech about the anatomy of hate, Havel examines the similarities and differences between individual and collective hatred. According to Havel the same kind of men who are inclined to individual hatred, are also capable of group hatred. Anyone who hates an individual is almost always capable of succumbing to group hatred or even of spreading it. I would even say that group hatred be it religious, ideological or doctrinal, social, national or any other kind is a kind of funnel that ultimately draws into itself everyone disposed toward hatred. In other words, the most proper background and human potential of all group hatred is a collection of people who are capable of hating individuals. (Havel, Oslo, 28 August 1990).

Collective hatred, on the other hand, has a “special magnetic attraction” that is, “the power to draw countless other people in its vortex, people who initially did not seem endowed with the ability to hate”. This power influences above all weak and selfish people, susceptible to the influence of those who hate. This attraction is much more dangerous than the hatred between individuals because the group hatred has many advantages.
First, Havel says, it eliminates “loneliness, weakness, a sense of being ignored or abandoned.” It offers a sense of togetherness, a strange kind of brotherhood: to say that some ethnic or religious group is responsible for all the misery of the world is very easy.

Second, the members of the community can reassure one another that they are right and the chosen group of offenders is worth of hatred. They can use uniforms, flags, favorite songs to confirm their identity and increase their own worth.

Third, while individual aggressiveness can be attacked with the claim to individual responsibility, a hating group in some way legitimizes violence, each member can justify the others. In this way each violent person dare to do even worse things.

Finally, group hatred simplifies the lives of the individuals who hate and are incapable of independent thinking, because they find a simple and immediately recognizable object of hatred: the color of the skin, the language, and the religion make the “offender” identifiable.

For all these reasons, Havel notes, collective hatred is much more dangerous than the individual one. And this hatred is facilitated by some antecedent. First, by objective situations of injustice or misery. Second, by the capacity of the human mind to generalize, which is “a fragile gift that has to be handled with great care”, because it can easily lead to attribute some groups a collective responsibility for actions they are not guilty: this is the beginning of racism. Finally by the spontaneous diffidence of man to what is other than itself.

We can thus assume that with the convergence of people around a common object to hate, a collective unleashing of the Eros of destruction can take place. And then the result can be that of planning criminal actions against overwhelming numbers of other human beings, which are perceived as a whole as the enemy to be eliminated in order to achieve a significant improvement of the situation.

At this point the belonging to a group, a party, or even more to a system of government with legislative, military and judiciary power, assumes a particularly important role. Within a system it is easy to form and strengthen a structure of ideal principles that give cohesion to the actions of those who rule, as well as theoretical justification for any kind of action. The human need to justify what you do manifests itself on the collective level as a research for theories and ideologies that make it possible to give some reasonability even to those actions that the individual moral conscience and the common moral sense perceive as unjust. In addition, membership of a group with political or military strength can pursue criminal purposes in a much more efficient, systematic and long lasting way.

VIII. The Question of Moral Responsibility in Crimes against Humanity

Before concluding we can dedicate a few words to the moral responsibility of those who, through the steps that we have tried to reconstruct, enter the path that Gregory Stanton outlined and we set out at the beginning in eight phases.

The reason why man does evil is evidently a mystery. The philosophical investigation will never be able to exhaust it, as no human law, however perfect, or no
police force, however coercive, will ever be able to prevent man to raise his hand against another man. Crimes against humanity are condemned by the laws of the states and by international agencies in defense of human rights because it is believed that man has an inviolable dignity, and therefore absolute rights such as the right to life, bodily integrity, to food, and not to be killed, tortured, mutilated, sold, etc. It is necessary to be aware of the fact that if one embrace a relativistic view and think that there are no rational arguments to demonstrate that man has a dignity and the moral actions which attack this dignity are absolutely wicked, there is absolutely no argument to refute the crimes against humanity.

Aristotle had already observed, however, that man always maintain the awareness of the most basic moral principles, of which the crimes against humanity are the most explicit violation. If there is a perception of evil that does not fail without a fault of the wicked, those who commit crimes against humanity cannot be excused. Any attack against the dignity of the human person implies therefore an objective responsibility of the person or persons who perpetrate it. Such responsibility depends on the extent the authors are capable of discernment, but can never be considered "non-imputable" to those who perform them. As already pointed out by Seifert, those who are on the lower levels of the hierarchy of power will have a lower responsibility than someone who is at the top. But even those who execute orders have the moral duty to oppose the criminal commands of their superiors.

A different issue concerns the subjective assumption of responsibility by those who commit crimes against humanity. The courts have a duty to establish and punish the objective responsibility. The sphere of the recognition and assumption of responsibility of the authors, instead, regards the individual moral conscience. It is a specific moral duty of everyone who comes into contact with these people to help them to understand the gravity of their crimes so that they can embark on a journey of repentance and repair of the harm done.

As Havel in front of the victims of the Holocaust, every man of moral sense is paralyzed in front of such a manifestation of evil like genocide and others crimes against humanity. The former President of Check Republic, however, concluded that this feeling of horror can be the way to discover the co-responsibility which links the human race. In a speech pronounced at a concert in memory of Holocaust victims, he said:

> Whenever I am faced with documents about the Holocaust, the concentration camps, the mass extermination of Jews by Hitler, the racial laws and the endless suffering of the Jewish people during World War II, I feel strangely paralyzed. I know I should say something, do something, draw conclusions, yet I feel that any words I could say would be false, inadequate, inept or deficient. I can only stand in silence and incomprehension. I know that one must not remain silent, yet I am desperately speechless. That state of paralysis proceeds from a deep perhaps even a metaphysical feeling of shame. I am ashamed, if I may put it this way, of the human race. I feel that this is man's crime and man's disgrace, and therefore it is my crime and my disgrace too. That paralysis suddenly allows me to perceive the depths of human guilt and my own co-responsibility for human actions and the condition of our world. As a human being, I feel suddenly responsible for humanity...
as such and, staring uncomprehendingly at this cruelty, I cease to understand myself, for I, too, am human. (Havel, Prague, 19 October 1991)

It is therefore necessary to consider that all human beings share a responsibility for each other, which for example, requires to worry about future generations, even if they cannot claim rights against us. (See Jonas 1984 [1979]). Each man has, therefore, a moral duty to do everything he can to prevent the crimes against humanity in the present time, but also to promote the conditions that may hinder such crimes to occur in the future.

One can support the pursuit of political, economic and social conditions to make possible a climate of harmony and cooperation among different ethnic political and religious groups, and also can encourage a cultural environment favorable to respect for human beings as such, regardless of sex, age, wealth, state of health, ethnicity or religion is obviously an action of remote preparation necessary. But all this is not sufficient.

Education in the family, in schools and other educational agencies should transmit a deep knowledge of the dignity of every human being as well as a habit of respect for the fundamental rights that flow from this dignity. The investment of the states in education and policies of family support should therefore include the attention to that kind of humanistic and ethical education that gives scarce immediate results in economic terms, but form the cultural environment from which the whole of society can draw nourishment.

We need to rediscover a culture of cooperation, instead of competition, even in the professional preparation, a culture of dialogue instead of resorting to violence, and that tolerate the use of force only in cases where the attacker needs to be put in conditions do no harm. As Havel observes, "a society in which there is cure of relations does not need a lot of rules." And the cure of relations is incompatible with the abuse of power or the hate of some group.

We can therefore share Havel’s claim that above all “we must struggle energetically against all the incipient forms of collective hatred, not only on principle, because evil must always be confronted, but in our own interests.” In the speech on hate we already mentioned he tells a story that can be our conclusion:

The Hindus have a legend concerning a mythical bird called Bherunda. The bird had a single body, but two necks, two heads and two separate consciousnesses. After an eternity together, these two heads began to hate each other and decided to harm each other. Both of them swallowed pebbles and poison, and the result was predictable: The whole Bherunda bird went into spasms and died with loud cries of pain. It was brought back to life by the infinite mercy of Krishna, to remind people forever how all hatred ends up. We […] should remind ourselves of this legend each day. As soon as one of us succumbs to the temptation to hate another, we will all end up like the Bherunda bird. (Havel, Oslo, 28 August 1990)
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THE ILLNESS OF REASON AND CRIMES AGAINST HUMANITY: GENOCIDE AS AN IDEOLOGICAL ACT

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Abstract: the present paper analyses the terrible phenomenon of genocide, which represents a particular case of crimes against humanity. We attempt at accounting for the causes at the root of the phenomenon, starting from two concepts, which we argue as central: the notion of 'type' and its impact to community construction, and the concept of ideology; the latter, understood as a philosophical perversion flourishing in an unprecedented manner in the contemporary world, allows the demonization of a group and the gestation of social processes conducive to destruction, especially because the targeted group is viewed as carrying a particular community 'type'.

IN THE present paper we examine the origins and causes of genocide, which we construe as one instance of crime against humanity. The result of our analysis will reveal that this terrible phenomenon is rooted in a particular type of intellectual miscomprehension, illness of the reason or philosophical confusion, and we shall try to construe why this miscomprehension takes place and how it can be avoided.

I. Genocide as crime against humanity and its particular intentionality

Our starting point is the juridical regulation given to the issue of genocide in international right, leading us to a better understanding of the characteristics that are specific and causative of this class of acts.

From a juridical point of view, it is possible to make a distinction, based on the Rome Statute of the International Criminal Court, between 'genocide' discussed in article 6, and 'crime against humanity', tackled in article 7. By this distinction it was decided to use the notion of genocide in relation to a number of very serious criminal acts whose common connection is realized by the idea of total or partial destruction of a group, which is or can be defined in terms of national, ethnic, racial or religious identity. Alternatively, those criminal acts which target civil population and take place in a systematic mode are referred to as crimes against humanity. All these acts are of extreme gravity, whether it may be assassination, deportation, torture, violation, etc., and also, the persecution of one group perceived as having a specific identity, from perspectives that can be political, rational, national, ethnic, cultural, religious or gender-oriented.

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International justice has taken the task to make a distinction between two phenomena that are juridically difficult to differentiate and that, frequently, seem intertwined. This fact pressed jurisprudence to attempt a clear and finely grained definition of the two penal offences, highlighting their particularities. Understanding this one specific difference constitutes a good starting point in the delineation of our object of investigation.

We need to attend to two fundamental elements in our attempt to contradistinguish a particular case of genocide from the more general context of crimes against humanity. These two elements are, following Anglo-Saxon canons of jurisprudence, the *mens rea* or the intentionality of the author, on the one hand, and the *actus reus*, or the committed act, on the other. As we shall see, the category that deserves utmost attention, for its capability to single out genocide, is the former.

When the International Criminal Tribunal for Rwanda examined the case of Georges A. N. Rutaganda, it clearly indicated that the crime of genocide requires intentionality in that sense (*mens rea*), more specifically, the will to destroy a number of people, not for their individual characteristics, but for the fact that they belonged to a specific group, be it ethnic, national or religious. In the case that this very specific intentionality would not exist or could not be demonstrated, albeit dealing with the same type of acts committed, we would have to speak of crime against humanity.

This seems to be the particularity of genocide, that in the end, what is intended is for a whole community to disappear because they possess that one or various qualities which are deemed unacceptable by the stronger group. Deeper still, the fight is against a quality, moral, political or religious, which is perceived as incarnated in a certain community. When we mention one group’s persecution against another, a state or a political regime, for reasons that do not essentially have to do with the features that are common to the respective community, we can affirm that the persecution is not aimed at the community, but at individual members of it, in which case we are dealing with a case of ‘crime against humanity’.

Before we proceed further, I would like to detain briefly on the etymological load of the term ‘genocide’. Raphael Lemkin coined the word in the early 40s, even though we had worked on it ever since 1933, when he was searching for a criminal case capable to approach the attempt to destroy nations on racial grounds (Lemkin 1944, 79). The term derives from the Greek “genos” (which shares origins with, and therefore is semantically related to genealogy), and “-cide”, a suffix inherited from the Latin verb *caedo*, “kill” and which adds to the root word it modifies the notion of “he who kills”. From this perspective, a genocidal person is one who kills those who have the same derivation, granting that the cause of such assassination is precisely a common origin.

Crimes against humanity have been defined in international jurisprudence in a more precise manner, especially so following the rule of International Criminal Tribunal for the former Yugoslavia against Momcilo Krajsnik. What singles it out

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1 Vid., http://69.94.11.53/ENGLISH/cases/Rutaganda/judgement/index.htm
2 Vid., http://www.unhcr.org/refworld/publisher, ICTY, 48ad29642,0.html. Especially paragraphs 705 and following.
from the crimes that are not competence of any International Court, but of courts in their respective countries, is the fact that those crimes are perpetrated on a large scale, viz., carried on systematically, against civilian population and with the awareness that they are indeed taking place systematically. In a nutshell, it is not only the fact that a series of criminal acts are carried on in an unarticulated or unconnected manner, although coincidental in time but most principally the fact that there is a desired reason for which such an act is performed, and which connects them around a common intentionality. There is a certain strategic frame within which large scale criminal acts are anticipated and even thusly desired. However, it is true in the case of the international court earlier mentioned, that, even though the existence of planned attacks constitutes sufficient proof of the systematic character, it is not necessary to demonstrate the existence of such a plan in order to be able to contemplate this criminal type. This rule appears to come in contradiction to the juridical definition of the act, since only a series of acts can be taken as systematic if they are contemplated in a plan or a system, albeit not in an entirely concrete manner. Undoubtedly, the Court did not intend to add to the difficulty of proving this type of acts the supplementary ordeal of having to prove the intellectual authorship also; suffice it to note that in the light of facts, the systematic character of killings could be presupposed or proved as factual evidence. It is beyond the horizon of the current paper to give due elaboration of this specific aspect.

With decisive brushstrokes, the distinction made by the Rome Statute of the International Criminal Court, viz. that between genocide and crimes against humanity and which we find to be based on the self-assumed pretension of the genocidal character to eliminate a certain community simply because it incarnates particular criteria or concepts. This however should not blinds us over it being, undoubtedly and at odds with a diverse set of specific features, an instance of crime against humanity, which enjoys a specific legal approach precisely because its mens rea or accredited intentionality. For instance, the Statute of the international Military Court of Nuremberg had already included in its Article 6 three specific criminal cases, viz., "Crimes against Peace", "War crimes" and "Crimes against Humanity", making in the last one a distinction between inhuman acts such as the assassination, deportation, slavery, etc., and the persecution for political, racial and religious reasons.

Before we explore more deeply the philosophical underpinning of genocide, we need to understand why there is a specific concern in the international panorama with the so called ‘crimes against humanity’. The first response is closely related to the brutal nature of the acts and the large-scale objective followed, which makes genocide so deviant that it offends humanity in its entirety and not just one person or persons who are material victims thereof. We must say that this appeal to the feeling of offense lacks the precision one would aim at, since other crimes which are not committed on a large scale can, by their cruelty, brutality or other characteristics, turn out to be particularly offensive for those who find out about them, and we do not think it necessary to produce examples of such barbaric acts.

Another possible response reveals other connotations, no less important, would make us consider that not only are these crimes intended to attack one or numerous persons which are labeled as ‘enemies’, but in the way brutality is carried on, and the
intentionality behind it we are able to see that the victims’ humanity has been reduced, and perhaps even disregarded. To a certain extent, the latter development expresses the particularity of genocide, as we shall argue as follows.

II. The notion of community “type” as a key criterion in the understanding of genocide

We already construed that genocide is, even if defined independently from the framework of the Rome Statute, a particular instance of crime against humanity. What gives it specificity is the intention to exterminate an ethnic, racial or religious group. Therefore, we are not dealing with criminal acts targeting one concrete person by virtue of her/ his individual personality, but rather because of her membership in a group; in other words, it is her particular feature (generally of a national or racial type, but also religious) what lads to her identification as member of a community. What is intentionally left out is thus the community, and more notably, that particular feature which constitutes and defines it.

The first aspect we need to review is what class of particular features can lead to a recognizable identity and, in a sense, exclusive, capable of generating community bonds within the group and external, in the sense that these can be appreciated from outside the group. The second inquiry relates to the social and cultural processes that allow the demonization of this ‘typological’ trait, and whether or not such processes conduce to the manipulation of social awareness regarding this specific community.

From the very beginning we need to affirm that it is possible to think of an isolated human being, however, the phenomenon lacks correspondence in reality. Individuals share community bonds and their identity is to a great extent constituted by these interconnections, even before they come to realize their own self or biographical identity. The existence of human beings is their presence in the world, and their life is always life in common. The most important thing for the present work is that the social complex that construes the subject is not entirely external, in the sense that it would add like some kind of superstructure to the self. In fact, were it so, genocide would hunt and eliminate the communitarian features with no need for its action to become crime, aiming, that is, to destroy and annihilate people.

When community links are intense, they not only produce a more or less formalized objective organization, in which persons can contribute to the search and realization of common ends. A real community creates inner and intersubjective connections deep enough for its members to conceive themselves and their existence as founded, to a certain degree, in the common belonging.

An excessive substantialism that is blind to the biographical and communitarian constitution of the human being could not comprehend to what point is genocide a serious attack on the very human condition. Conceiving man in terms of pure naturalism, as though he were covered in layers (family, people, group of friends, nation, etc.) hinders the possibility to understand, from a philosophical view point, the seriousness and the consequences of genocide crimes.

An authentic community affects its members deep in their self and leaves an enduring mark. This does not mean that human being is a cultural product, but we
acknowledge that at least some of the relations which have an impact on the self are co-determined by culture, in the sense of configuring identity and that of that identity being perceived outside of the community. It is this specific perception that genocidal authors draw on in order to realize their objectives. When community links are race based, the belonging to a community is not always, nor with every individual, a matter of evidence or openly expressed, and it is so that genocidal projects tend to provoke the visibility of targeted people. As we well know, in the Nazi Germany, Jewish people were made to bear the star of David for identification. In Rwanda, at the end of the twentieth century it was compulsory for the identification card to state the name of the tribe one subject belonged to, in order to detect immediately if one was a Hutu or a Tutsi.

By ‘type’ we understand the feature that allows us identify community membership with a high impact on the self. The Greek word is applied to objects that have been transformed by external and internal impacts and conducd to them attaining a specific form or shape. If we focus on human beings, the term ‘type’ would make reference to the influence that external elements, social or environmental, can have on people. We should indicate that the notion we are analyzing draws on Edith Stein, and is thus interested to reveal the way in which the consciousness of the subject grows from his interior (Stein 2010, 134 and ss.)

We can affirm that we are dealing here with something that is neither exclusively nor necessarily, exterior, or acquired at some stage of one’s life, but rather an inner axis that is given to the subject and which characterizes him before he can be aware of his own individuality. This notion of ‘type’ impedes the subject to be understood solely as the product of the community he belongs to, allowing the correspondence with an externally configured nucleus, which, despite everything, is transcended by the subject’s own personality, which makes unique not only his own personality, but his personality inside every single community he is a part of. Every individual is, from her/ his birth, a human being, and specifically, a male or a female, offspring of his parents and of his family in the broader sense, of his people and of his race.

The first dispositions that we note in a subject are inbuilt in him from the very beginning, however, how they are developed is highly dependent on the environment in which those potentials unfold and on the subject’s free response. An environment-free subject would not develop his capabilities, so the culture in which one lives and grows is essential to the fulfillment of a given potential. Essential is not one particular environment, but being part of one environment, of one culture, is essential to full human development.

In this sense, the unique character of human being cannot be penetrated based only on a typical structure, but undertaking this perspective allows us to understand how membership in specific communities offers the subject a personal and a social identity which can become relevant from a moral, political or religious point of view. In fact, the type of one community may even formalize or manage vital functions, such as how people eat, what they understand by marriage, the concept of justice, of political structure, of sexual morality or intimacy, etc.

Communitarian type requires, thus, two things: first of all, an external element capable of configuring a sense of belonging, that is, the existence of one group or
community sharing at least one singular feature accountable for a specific community ‘type’; secondly, an external element is needed, e.g., the attachment to an external element, co-determinant of the structure type. The result is the existence of a well configured whole, detectable in human behavior, specific to man and common to all men.

Exclusive attention paid to external elements obscures the comprehension of human creatures as beings which incarnate an unrepeatable peculiarity, not just in the metaphysical, even theological sense, but biographical alone, in the sense that it assumes the singularity of a process in which every single external event is assumed, in a constant and unique relation of freedom between the subject and reality. Only a reductive stance on the human being and his life in community enables, as it has, the most terrible crimes against humanity, as what is constantly reviled and exterminated is humanity itself, always debated in the same terms between the subject the world.

In this sense and from a social point of view, we argue that type allows us to identify a subject with such precision that we can single it out from those who do not bear that particular community seal, which can generate - only too easily – a notion of ‘us’ and ‘them’ with the potential to become fertile ground for ideological projects to breed genocidal pretenses.

Ideology, in the sense we wish to delineate here, has the potential to impact on the conscience that the whole society is determined by a ‘communitarian type’, with undesirable consequences of the phenomenon under discussion in the present paper.

II. Ideology

a) Ideology as philosophical “illness”

Ideological discourse is one of the most pervading phenomena in our time. Today’s mass society, blazoned out by mass media, need to structure and interchange information that is increasingly wide-ranging and diverse. There is only one way of make sure that those contents are efficiently communicated and assimilated by the possible receptors, which implies adjusting the message to the hermeneutical parameters of the receiver or using those already interiorized by her/him.

It follows that every message that is transmitted through a mass medium, or, to put it differently, every message that contains information addressed to a considerable amount of people, needs to be comply with a specific structure and contain a number of terms (the so-called buzzwords) whose significance is standardized and which open a targeted ‘hermeneutical horizon’. This type of words would generate a semantic field by their belonging to a dichotomy that has a particular social relevance. In the European countries characterized by a strong ‘welfare state’, with a powerful philosophical tradition of social-democratic thinking, the “public/ private” dualism has created one such dichotomy – or dialectic domains around which public discourse is organized. Other similar examples are, conservative/ progressive, religion/ reason, or equality/ inequality.

As these examples illustrate, the buzzwords are terms which underpin the discourse and, consequently, the reader, by placing him in a familiar hermeneutical horizon, and which allows him to structure and classify information. If in an
European political context, for instance, a newspaper affirms that a politician is “unfavorable to public healthcare”, or that he “favors private healthcare”, what it is conveying is not limited to that politician’s political preference; in the countries situated in the Centre and South of Europe, the pragmatic meaning of the affirmation would take precedence over the semantic, concretely, an accusation that the politician under discussion lacks solidarity and, and, in a more veiled way, that he is corrupted. This is so due to the fact that social discourse in these countries, with regard to elements valued as fundamental to the welfare state, such as healthcare and education, the possibility that these could be managed by private corporations goes against the most disadvantaged, and as such, threatens social progress. This political stand is, for the greater part of civil society, so irrational that its only explanation can be found in the private interests behind his public actions. At stake it is the principle, otherwise true on too many occasions, which behind totalitarian states lay economic interests disguised by the systematic violence, while a subtler economic violence flows through the veins of liberal democracies.

A similar system of social communication illustrates the power of ideological language in our societies, both in the linguistic architecture of the discourse and in terms of contextual clues, which allow us to process it. We can safely argue that every structure of social communication at global scale in the contemporary world is organized through ideological schemes. This communicative model has a tremendous impact on our worldview and a great potential of message propagation to a huge number of people, as long as they comply with a set of basic guidelines of ideological discourse, which we shall elaborate as follows.

Ideology generates a very particular discourse type, which, we must admit, represents a true counterpoint to philosophy, to the extent to which it is easily mistaken for it; in fact, ideology owes its existence to philosophy, whose organism inhabits as a parasite. In general terms, there are two big theories that account for ideological discourse: the Marxist theory of interest and the theory of despair.

The former favors that all discourse, as well as all aspects of life encrypt ideological considerations, which respond to specific (social) forces and interests and the objective of all ideological discourse is to coerce and prevail. Some authors, following on this conceptualization, consider that all public actors in our contemporary societies have power as their fundamental goal (vid. Vattimo 1989). The latter theory, in turn, represents a natural evolution of the previous, or its immediate consequence. The abundance of reports on the good life, of discourses generating a wealth of images in representation of the world and the society, and the absence of nuclear criteria to structure the practical life and to permit the critique and the choice among the various versions available, have the effect of instilling in the contemporary man (we could well say post contemporary man) a certain despair. In a situation as this, ideology appears as a way out or a refuge, as it sums up, reduces and thusly enables one to understand, and therefore to assume reality. This is the mechanism by which ideology becomes a response to despair (Geertz 1973, 201 and ss).

We are not interested as much in the psychological, political, economic or social origins of ideology, but in its place in the etiology of genocide. We need to note that
the central feature of ideology, essential for the realization of its social function (in any one of the theories mentioned previously), is the fact that it operates a reduction of the reality, a simplification which allows, on the one hand, to manage some parts of it, but this ability is acquired at the expense of consciously leaving aside, eluding or even distorting others.

Ideological discourse seems to offer an explanation of the reality, and through the hermeneutic axes which structure it, if not of all reality, at least of its nucleus, or the essential part of it. Indeed, it does not offer itself as an instrument to help make sense of reality, but as a substitute to reality itself. In other words, by offering the sense of what is real, it comes significantly more necessary in our attempt to live and understand the surrounding world than it is to explain the most heterogeneous data about the world.

In principle, having the hermeneutical key to understand our society, its elements and characteristics, as well as human life and its place in the universe, does not appear as something negative. On the contrary, it is valuable and necessary information, and we cannot do without it. However, ideology insinuates itself as a closed-in on itself type of discourse, that is, an attempt of explanation of the world, which allows one to turn his back on reality. It invites the reduction and transformation of reality so that it always adapts to the respective ideological criteria. This is how it replaces reality or at least aims at succeeding it.

In this capital sense, ideology is the counterpoint of philosophy, some sort of illness, since it promises to deliver those basic notions that are, among others, specific to philosophy (fundamental theoretical and practical data on the quality of being valuable, good, beautiful, etc.), with no concern for reality, without allowing reality to be. Instead, ideology intrudes into what we might consider the fundamental attitude of a philosopher, namely granting that it is always more important that which is given to us as experience, that our prejudices or previous considerations. Thus, a good philosopher alters her/ his thoughts if his experience and reason proves him wrong, while the ideologue denies the empirical data of experience when those are not attune to his ideology, either by reducing those or otherwise manipulating them at will. Which particular relation between philosophy and ideology allows us to affirm that ideology is an illness, or pathology, affecting philosophy?

If the context specific to Plato, with the conception of desire construed by the world of classic Greek, and his own notion of good, determined him to affirm that Love is the son of Poverty and Abundance, then, in our own context we can affirm that philosophy is the daughter of Admiration and Violence. Admirations is always the vital starting point in philosophy, being the undertaking of every human being when the world “captures his attention”, when he reaches to reality in order to assume it, to remain fascinated by it, so that it offers to us as it is. Nevertheless, admiration presents to us an ever changing and ephemeral world of impressions, individual objects or things concealed in relations still to be determined, faintly shaped, which remain hidden to a great extent. The world that awakens our admiration demands to be systematized, made sense of, comprehended, unveiled.
Understanding the world requires, inevitably, to expose it to a certain violence. Systematizing, adopting one method, analyzing, is imposing violence on the world. Understanding involves establishing hierarchies, differentiating concepts, defragmenting the complexity in an analytical, methodological and hermeneutical pursuit. Comprehending the meaning of reality implies allowing subjectivity to impose itself, in a way, onto that which was received, in order to work on it as well as a surgeon in the surgery room. An adequate philosophy is capable of keeping under control the tension between admiration and violence, in the sense of placing the latter at the service of the former; in other words, it is always willing to cease the use of violence, of its own criteria or method, so that reality can prevail. The philosophy that skillfully uses violence, does so as well as a gardener deals with a plant, propping or fixing it into the ground to prevent them from being uprooted by the strong wind. The philosopher is at the service of reality.

Ideology, instead, exercises a different mechanics. It is not interested in reality unless it can manipulate it, transform it, imposing its own will onto it. In actual truth, what is real constitutes an obstacle in the way of ideology, to the point that, insofar as it is concerned, reality may well die or otherwise disappear. The ideologue would favor that his own will were the only existing reality. With him, violence has taken control, and he stands before reality with the attitude of a murderer. He manipulates the discourse as to what things are with the sole objective of dictating his own version (sometimes one that is far from the crux of reality, that it constitutes a per-version), although that had nothing to do with what is given and, insomuch as it was given, with experience. Ideology becomes “a way of thinking committed to its own ways” (Stark 1958, 48). An ideology will never allow a truth to ruin its carefully pampered conceptual construction. That is why the ideologue is for the philosopher what the detritus for the idealist.

b) Ideology as the root of genocide

Genocide is the most dramatic expression of ideological pretentions. The discourse that accompanies genocidal projects is always an ideological discourse, in that it is always construed with ideological criteria. In fact, the discourse encouraging genocide establishes as a primordial notion that the “type” which constitutes a community contains a series of elements that need to be extirpated from a geographical space, a country or even from the world. However, the “communitarian type” is not an abstract element: even though it is present in people, those people represent more than the “type” which is singled out, and whose presence demonstrates the difficulty of reducing them to that type without exercising violence on reason, on reality.

Ideology then needs to accomplish the ordeal of narrowing down the complex human being who is a member of a given community, the diverse levels on which her/his humanity is revealed (moral, political, religious, etc.), to the simple group

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3Such as a romantic garden lies before us with its trimmed hedgerows and rose bushes, trees and other plants perfectly lined, we know that organizing nature requires the use of violence, taming it, dominate, manipulate and shape it, so that it may reach its most resplendent beauty.

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membership; in other words, it intends that this person, his individuality, be constituted by his belonging to a group, and subsequently, by the “communitarian type”, which needs to be demonized. We all agree that in this way, the living subject cannot recognize himself as what he really is, with the rich diversity of his persona and the dignity he is endowed with, but roughly as Armenian, Jewish, Tutsi, to mention but some of the most terrible genocides of the twentieth century.

It is never enough to explain what a genocide is in order to avoid the existence of certain feelings of aversion towards a specific social group nurtured by the rest, or by the greater part of the society, or by the greater part of the individuals who do not belong to the stigmatized group. Such aversion, which may be historically, socially, culturally or religiously motivated, is never an acceptable explanation for genocide (Bauman 1989, 33). Other criteria are necessarily called in to generate a legitimating discourse for the physical elimination or massive deportation of one community. It takes a paradigmatically ideological discourse to catalyze the whole genocidal process. It was not enough that the Jewish people were a group easily recognizable for the specific communal features which the other people found unpleasant, but this type had to be used as a connection with the evils of capitalism which the National Socialist Party strove to eliminate (Bauman 1989, 48).

Neither was it satisfactory that the Hutus had to share a common territory with a Tutsi minority traditionally dominant; a considerable number of mythic narratives has to emerge which reduced the conceptual horizon form which a Tutsi could be perceived, oriented specifically to her/ his Tutsi identity, something that turned him into a carrier of all the negative elements which needed to be eliminated (Taylor 2002, 140).

III. Conclusion

The present paper has intentionally left out some arguments and perspectives that could be formulated with regard to the crime of genocide. We focused on the influence of ideological discourse on genocidal processes. As we have already affirmed, the logic of genocide requires in the first place that a community be distinguishable through a feature that is construed as significant, in the sense of a potential locus of “anti-value” which shall be later assigned. Being a member of a bridge players’ club, for instance, and except for unusual circumstances, has no sufficient potential to make that individual the carrier of whatever anti-values others would like to assign to him. There is not enough reality to enable negative aspects and anti-values (forcefully the backlog of the corresponding positive aspects and values) to pose. Being a member of a tribe, a race, believer of one religion, etc., are more likely to constitute a “communitarian type” to be used in the identification of members and grant them differential characteristics which will generate an “us” and a “different from us”, both from an internal and an external perspective on the group. However, the “communitarian type” alone does not fully account for genocidal phenomena. The type requires ideological manipulation in order to deliver a discourse in which certain fundamental anti-values are associated to it and which a political project is determined to eliminate; that in turn will require that, to the extent anti-
values are hosted, incarnated – allegedly - in a community, all its members need to be eliminated. This ideological aspect, as well as the presence of a community targeted to be eliminated by virtue of the “communitarian type” emphasized, are fundamental features of the phenomenon of genocide.

References

AFFECTIVE DISORDERS OF THE STATE: A SPINOZAN DIAGNOSIS AND CURE

Ericka Tucker

Abstract: The problems of contemporary states are in large part “affective disorders”; they are failures of states to properly understand and coordinate the emotions of the individuals within and in some instances outside the state. By excluding, imprisoning, and marginalizing members of their societies, states create internal enemies who ultimately enervate their own power and the possibility of peace and freedom within the state. Spinoza’s political theory, based on the notion that the best forms of state are those that coordinate the power and emotions of those within a state, offers us both a diagnosis of and a cure for these affective disorders. In this paper I will outline Spinoza’s notion of the power of the state as a function of the power and coordination of the emotions of its citizens, and show that when the state contracts an affective disorder, such as excessive crime, rebellion, terrorism, etc. the state has failed to properly empower, include and coordinate the passions of the multitude of its citizens and subjects.

CRIME, TERRORISM, riots, political factions, culture-clashes and religious extremism: the problems of contemporary states are destructive, but are they intractable? Can we understand these problems as caused by the same forces? In this paper, I will suggest that these problems can be understood as ‘affective’ or emotional disorders that emerge when governments fail to properly understand and coordinate the emotions of individuals within and in some instances outside the state. Developing my framework from Baruch Spinoza’s unique theory of political psychology, I will propose that by properly understanding the affective foundations of political life, we can diagnosis and cure these affective disorders.

Despite his absence from the canon of Anglo-American political thought, Spinoza has much to offer contemporary political theory. In recent years, political theorists writing on the topics of toleration and freedom of expression have revived Spinoza’s writing on these issues. While Spinoza’s arguments for toleration and the

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freedom to philosophize are powerful, they rest on his understanding of human psychology and specifically his theory of human emotions and their political importance. In this paper, by investigating the psychological and metaphysical foundation of Spinoza political theory, I hope to contribute to the literature on Spinoza’s usefulness for contemporary political thought.

I. Power, Passions, and Freedom in Spinozan Political Theory

Spinoza built his theory of political philosophy, including his arguments for democracy, toleration, and freedom of expression on his theory of emotions and individual power. Spinoza takes humans to be primarily ‘affective’ or essentially emotional creatures. Spinoza argues that in order to build strong democratic states, we need to understand how to coordinate the emotions of a multitude of diverse passionate individuals. Spinoza’s primary original contribution to political philosophy is the view that the power of the state is a function of the power and organization of the emotions or ‘affects’ of those within the state.3

Problems of the state destroy public feelings of security and undermine the power of the government to provide such security to its citizens. The proposed ‘solutions’ to these problems are often worse than the problem themselves. Mass imprisonment, exclusion, increased citizen surveillance, police crackdowns and military interventions reduce the freedom of citizens and limit the possibilities of individual and collective flourishing. In Spinoza’s view these ‘affective disorders’ predictable and preventable. They can be prevented through empowering citizens and including those who may turn to crime and violence.

Solutions to the state’s affective disorders that disempower the populace further by increasing their fear destabilize the state and diminish the possibility for peace and freedom in the state.4 When rulers fear their citizens, they react in ways that are both predictable and counterproductive. They imprison, they spy, they exclude, and they try to diminish the power of those whom they most fear. However, in Spinoza’s view, such measures serve only to increase the indignation of the people and further destabilize the state. The power of a state is not measured by how effectively a government can oppress its people. Rather, the power of a state is a function of the power of the citizens of that state.5 Disempower one’s citizens, and one is left with a weakened polity. The best state, in Spinoza’s view, is one that need not fear the power

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5Spinoza, *Political Treatise*, TP 2.17, 687; TP 3.2, 690.
of its people. For Spinoza, no stable or free state can be based on antagonistic relations between rulers and ruled.  

Living in a time of incredible political upheaval and diversity in culture and religion, with factional disputes spilling into bloody riots in the streets around his home, Spinoza came to see organizing the passions of the rulers and citizens as the basic problem of political philosophy. Unlike the neo-Aristotelians of his time, Spinoza did not think that human benevolence and natural sociability was a firm enough foundation for political security. Spinoza, following Hobbes, rejected Aristotle’s dictum: “It is evident that the state is a creation of nature, and that man is by nature a political animal.” Spinoza granted that humans need one another and that we affect one another by our passions. This passionate interconnection, however, does not mean that a stable society is natural or that human sociability is a sufficient foundation for politics. The same passions that bring people together and create the social world can destroy it. For Spinoza, every passion has two sides -- a constructive and destructive side. A group of individuals ruled by their passions has both a potential for democratic empowerment as well as a potential for chaos. The passions are volatile, and a multitude ruled by them cannot be trusted to achieve peace alone. Spinoza argues that to achieve peace within the state rulers needed to attend to the passions, or ‘affects’ of their citizens. Spinoza understood the power and capacity for peace of the state as a function of the power and coordination of those individuals within its boundaries, which, following Hobbes, he called ‘the multitude’. For Spinoza, the job of the state is to organize the passions of the multitude through the creation of institutions that align the passions of the individuals with the interests of the state.


7 Spinoza argues that the social emotions were double-edged, leading to both peace and conflict. Spinoza, Ethics, in Shirley (Ed.) Spinoza: Complete Works. (Indianapolis: Hackett, 2002), E3P31C (Ethics, Part 3, Proposition 31, Corollary), 294-5; Spinoza writes, “From the same property of human nature from which it follows that men are compassionate, it also follows that the same men are envious and ambitious” Spinoza, Ethics, E3P32Scholium, 295.


9 Spinoza, Political Treatise, TP 2.15, 687.

10 Although Spinoza uses both ‘passions’ and ‘affects’ throughout his works, ‘affects’ is a technical term within his psychology. Spinoza, in the Ethics, changes to the consistent use of the term ‘affectus’ or ‘affect’ to show that what we think of as our emotions or passions are in fact caused by external forces. External forces ‘affect’ us and we experience those forces as emotions or passions. For the purposes of this paper ‘affect’, ‘passion’, and ‘emotion’ should be considered equivalent.

The best state organizes the passions of the multitude so that the power of the multitude is increased, with this increased power accruing to the state.

To the contemporary ear the phrase ‘power of the state’ and the aims to ‘increase the power of the state’ in order to make the state ‘more absolute’ may have a chilling ring. However, Spinoza, writing at the birth of the modern state, and as one of its first theorists, believed that the state was the best hope for individual empowerment and freedom. Spinoza argues that outside the state, or in a poorly organized or ‘bad’ state, organized through fear, there could be little hope for human freedom. By ‘freedom’, Spinoza did not mean liberty or the absence of obstacles, as in Hobbes’ sense, but rather the positive freedom to increase one’s power and knowledge of the natural world without limit. Such ‘empowerment’ can only be achieved collectively, within an organized sovereign state. Fear and exclusion diminish the power of the state, and thus, in Spinoza’s view, the possibility for human empowerment and freedom.

The power of Spinoza’s state is ‘enabling’ power. Spinoza’s state, we will see, can only become more powerful by increasing the power of its citizens.

Spinoza argued that the best states are strong democracies. For Spinoza, the problem of politics consisted in finding out how to make a state more powerful in a way that also made it freer. Given the dearth of democracies in early modern Europe, the idea of a free or democratic state that was stable seemed oxymoronic, and was indeed a fringe view. Mainstream political theory and practice insisted that one ‘head’

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12 Hobbes, D.Cv. II.ix.9, 178.
14 Spinoza, Ethics, E4P18S, 330-1; E4P73, 357-8; E4App.IX, 359; E4P37S1, 339-40; TTP Chapter 20, 566-7; Spinoza, Treatise on the Emendation of the Intellect in Shirley (2002), TIE §14-15, 6.
15 Spinoza, Ethics, E2Def6, 244; E3P7, 283; E4Pref, 321; E4Def8, 323.
17 Spinoza’s emphasis on the importance of the state in yielding human empowerment may come as some surprise to those who know Spinoza primarily through the anarchist interpretations of Michael Hardt and Antonio Negri. It is beyond the scope of this paper to argue that Spinoza was not an anarchist, but the main line of argument is the same as that against the neo-Aristotelians of his own time. For Spinoza, if humans were completely reasonable and their emotions totally controllable, there would be no need for states. Spinoza argues, on the contrary, all humans are part of nature, and therefore necessarily passionate. It would be folly to imagine that passionate individuals could spontaneously order themselves. We cannot wait for the impossible – human perfection – in order to have peace. Further, we do not need human perfection in order to have peaceful states in which all can flourish. The aim of Spinoza’s work was to show how, given imperfect and passionate human beings, we can create strong states that are powerful, empowering and free.
or monarch was necessary for a state to be stable. In fact, in United Provinces, Spinoza’s own state, the idea of a headless republic threw political theorists and politicians into a crisis. At one point, in order to have a head for their state they invited Queen Elizabeth of England to rule the Provinces. However, Spinoza designed his alternative theory of political power to offer a non-monarchical solution to the problem of creating strong and free states. In his political works he does so by undermining monarchical theories of power. He argues that no matter how strong and fearsome one’s leader, a monarch is only as strong as the multitude of subjects and citizens he or she is able to command. Thus, for Spinoza, the power of the state is not vested in the monarch, but rather is a function of the power of the subjects and citizens. In technical terms, this is expressed as follows: Spinoza understands the power of the state as a function of the power of the multitude.

Spinoza’s multitude, in contemporary Spinoza studies has come to mean all sorts of things, but for Spinoza, a multitude is just a group of diverse individuals living in a particular territory – it is best understood as an aggregate of diverse individuals, who may not share a religion, history, culture or ethnicity. The power of the multitude, in turn, is a function of the power of the individuals in the multitude, and their degree of organization and agreement. In very general terms, on Spinoza’s view, a multitude is strong if it is made up of well-coordinated individuals who have relatively reasonable laws and customs. A multitude is weak, if the individuals within it are completely disorganized and are each following their own passions – something along the lines of Hobbes’ state of nature.

II. Individual Power

Following Hobbes, Spinoza argues that in order to understand the power of the whole, the state, we need to understand the power of its parts – the individuals within the state and their interactions. Both Spinoza and Hobbes focused on the emotions of individuals (or affects, in Spinozan terminology) as their primary mode of interaction. In the following section, I will set out Spinoza’s conception of individual power, and then connect this to the theory of collective power, set out above.

For Spinoza, each individual has an irreducible index of power, or conatus, which is derived from God, and which can be increased through the proper organization of the affects and the imagination. The affects, or passions, are, for Spinoza, the expression of the force of the natural world on individuals. External forces impinge upon us, creating affections in us. For Spinoza, humans are part of nature; their knowledge of themselves and the objects that surround them in the world comes through their being affected by these objects. Spinoza defines the affects as follows: “By affect I understand affections of the body by which the body’s power of

19 Spinoza, Political Treatise, TP 2.17, 687; TP3.2, 690.
20 Spinoza derives his notion of multitude from Hobbes (De Cive, VI.1, 174); [Citation removed for blind review].
21 Spinoza, Ethics, EIP34; ElVP4D, 324-325.
acting is increased or diminished, aided or restrained, and at the same time, the ideas of these affections."  

The individual experiences increases or decreases in power as affects: as joy or sadness or guilt or anger. 

In the Ethics, Spinoza argues that 'affects' can be both active and passive. The active affects, like joy, express an increase our power. Joy is the expression of an increase in our power of thinking and acting. With increased power to act and think, we are better able to understand the world around us and ourselves. The more we understand the world, and what is genuinely beneficial to us, the more likely we are to make decisions that increase our power. Thus, this increased power prepares us to increase our power further. This increase means the individuals can resist the negative or passive affects that would otherwise decrease their power. Joy, thus, acts as a kind of shield against the bad or passive affects.

The passive affects, like sadness and fear, express a decrease in our power. Spinoza understood that when humans are fearful, sad and angry, although they are weak, they are dangerous to themselves and others. When humans are weakened by sadness and fear, they tend to latch on to anything that seems like it might palliate their temporary sadness. They believe any superstition and they may make unwise alliances with any individual or group which seems to offer them relief or hope of a better state to come. When at one’s weakest point, we have little energy to investigate the causes of our unhappiness. Those things that offer temporary relief from our pain may not always be the best things for us. Individuals increase their power through increasing their active affects, like joy. Individuals become most powerful when they understand and act by following reason; however, Spinoza does not expect the mass of individuals to ever follow reason, or to understand what is best for them. Spinoza writes,

Now, if men were so constituted by nature as to desire nothing but what is prescribed by true reason, society would stand in no need of any laws. [...] But human nature is far differently constituted. All men do indeed seek their own advantage, but by no means from the dictates of sound reason.

For Spinoza, human beings seek their advantage, but are often mistaken about what is truly good for them. Spinoza's solution, both to help individuals seek what is actually best for them, and also to create a state which would be powerful enough to protect and support these individuals, is to organize the state in such a way that the multitude would identify with the state. From this initial identification, the state can

22 Spinoza, Ethics, E3Definition3, 278.
23 Spinoza, Ethics, E3 General Definition of the Emotions, 319-320.
24 Spinoza, Ethics, E3P37D, 297.
25 Spinoza, Theological-Political Treatise, Chapter 5, 438; Political Treatise, TP 6.3, 701.
26 Spinoza, Ethics, E3P2S[ii], 280-282.
27 Spinoza, Ethics, E3P27, 292; E3P27S, 293.

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encourage individuals to act in accordance with its laws. However, the imaginative identification is prior to and ensures that individuals follow the law. Wise legislators, Spinoza argues, do not count on citizens to be reasonable. Instead, they create a variety of other mechanisms to encourage individuals to identify with the state and to follow its laws, following the laws of the state as if they were following their own interests. To ensure that individuals in the multitude identify their interests with those of the state, their affects and imaginative conceptions of the world must be coordinated. What is achieved in this coordination is not just obedient citizens, but empowered citizens; individuals whose power can accrue to the state. In the next section, I will outline Spinoza’s theory of individual power to show how, for Spinoza, individual power is enhanced through progressive and inclusive democratic states.

III. The Spinozan Individual

Each individual human, for Spinoza, has a certain striving or power, which he called, ‘conatus’. Spinoza borrows the term ‘conatus’ from Hobbes; however, his conception of conatus differs from Hobbes’ in several important ways. Hobbes understands individual humans as characterized by appetites and passions. They are motivated by fear and desire, which culminate in the will, which Hobbes defines as ‘the last appetite before action.’ In other words, passions and desire culminate in individual action. In Hobbes’ conception of the state of nature, these passionate beings are motivated by fear and desire to preserve themselves. Each fears the intrusion of the other. Each has a right to any and everything that could preserve them, yet because of their weakness and fear of others they are unable to obtain or hold onto these things for long.

Hobbes’ state of nature is chaotic, and lacks the rules and coordinating forces needed even to assure the shared use of language. Without shared conventions or norms working together would be a challenge for these individuals. The only sure way to coordinate individual actions and desires, Hobbes writes, is through the creation of a sovereign who will ensure the mutual assistance pact that the individuals make among one another. In Hobbes’ contract scenario, the free and equal individuals of the state of nature agree among themselves to give up their power, judgment and will to a sovereign, which they create, and whose power can be understood as the summed power of each individual.

Spinoza takes up this Hobbesian picture of the political individual, agreeing with Hobbes that this individual is moved by its passions and by its conatus, or desire for self-preservation. Spinoza, however, redefines conatus as the power or striving of an

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28 Spinoza, *Theological-Political Treatise*, Chapter 4, 427; An example of a strategy is given in the *Theological-Political Treatise*, Chapter 17, 538-539.
Spinoza adds to this model of the individual an index of power, which can decrease or increase. The lower limit on this power is the minimum amount of power an individual needs to stay alive, and the upper limit or maximum, Spinoza leads us to believe, is unknown; given our ignorance of the capabilities of the human being understood as part of Nature.

An individual’s conatus is affected by the individual’s appetites, but is also shaped by the individual’s imaginative view of themselves and the world, insofar as the world is that which increases the power of the body. An individual’s conatus consists of three elements:

i. Appetite or desire
ii. Image of oneself
iii. How one imagines those things which increase the power of the body

All three of these contribute to the individual’s conception of itself and the world (those things which increase its power). This imaginative conception of oneself and the world can be more or less accurate, or, in Spinoza’s vocabulary ‘adequate’. We can be wrong in a variety of ways about who we are, what is best for us, what forces affect us, and what things increase our power.

“Adequate” is a technical term for Spinoza. The more ‘adequate’ or reliable one’s conceptions of the world, the better one understands the world. Adequate is a scalar notion: the adequacy of one’s understanding of the world is a matter of degree. We can develop more adequate understandings of the world and ourselves. We begin with inadequate imaginative conceptions of the world, then as we increase our experience and come to understand ourselves and the physical nature of reality, our imaginative views become more adequate. The better or more accurate this imaginative picture, the more our power is increased; the more confused the picture, the weaker we are, and the less likely we are to make choices which will increase our power or preserve us in the best way possible.

If, for example, we are hiking and hungry and think that what are in fact poison berries might be a tasty treat that we then eat, we are likely to decrease our power by becoming sick. If we had prepared snacks in advance we could have avoided this consequence. Better still, we could have researched edible flora before our venture. That is to say, the more we understand our physical environment and ourselves as physical beings, even in this very mundane hiking example, we will prepare for this very predictable mid-hike peckishness.

When we are ignorant of ourselves as physical beings and ignorant of the natural world in which we live, we are bound to make poor choices. If we are ignorant of the natural world and ourselves as bound by this physical world, we might also develop unrealistic goals, which can then lead to poor choices. If we lack an adequate

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32 Spinoza, Ethics, E3P6, 283; E3P7, 283.
33 Spinoza, Ethics, E3P2, 279-280; E3P2S, 280-282.
34 Spinoza, Ethics, E3P9S, E3P9D, E3P11, 284-5.
understanding of our bodies and the nature of the physical world, for example, we may think that we can use our arms to fly. If we try to flap our arms and fly, we are likely to be disappointed. These are somewhat ridiculous examples, but they show the essence of Spinoza’s view: the better we understand the natural world, and ourselves as natural creatures, the better decisions we can make, the better goals we can develop, and the better we can preserve ourselves.

We can be wrong about what we desire, about who and what we are, and we can be wrong about the world and what is good and bad for us. To the extent that we are ‘wrong’, that is, that our ideas or imaginative conceptions are inadequate, our actions based on these ideas cannot help but be non-optimal. As we come to investigate the natural world and ourselves as part of the natural world, we have the chance to increase our power, to make better decisions, and to act in a way that is actually best for us.

Spinoza’s revised picture of the individual changes his view of the state of nature and of the method by which individuals leave the state of nature for political society. In the Theological-Political Treatise (TTP), Spinoza first presents a Hobbesian picture of the contract scenario, where individuals join together and contract to transfer their power to a sovereign, which they agree to obey. In the following section of the TTP, Chapter 17, Spinoza begins to worry about the feasibility of this transfer. Although Hobbes’ notion of a collective agreement among the individuals in the multitude to transfer of power and authority to the sovereign appears valid, Spinoza is not convinced that such an ‘authorization’ or ‘transfer’ is effective. Spinoza doubts that agreements of this kind could be counted on in the future to stabilize this previously disordered multitude for once and for all.35

Spinoza argues that, in reality, no individual could give up either all his or her power or all his or her judgment to another.36 No one can give up all his or her power to the sovereign; each always retains that portion of it that they require for living. This retained power may not seem like much, since these individuals are small and relatively weak. However, whatever power they retain is power that they withhold from the sovereign and which the sovereign may later fear. For Spinoza, this power retained by the individuals entering the civil state erased the boundary between the civil state and the state of nature -- it doomed the Hobbesian contract scenario. Spinoza writes:

The picture presented in the last chapter of the overriding right of sovereign powers and the transference to them of the individuals natural right, though it comes quite close to actual practice and can increasingly be realized in reality, must nevertheless remain in many respects no more than theory. Nobody can so completely transfer to another all his right, and consequently his power, as to cease being a human being, nor will there ever be a sovereign power that can do all it pleases. […] It must therefore be granted that the individual reserves to himself a

35 Spinoza, Theological-Political Treatise, 16, 528-530.
36 Spinoza, Theological-Political Treatise, 5, 438.
considerable part of his right, which therefore depends on nobody's decision but his own.  

The individual, indeed, all the individuals in the multitude retain their power, which they can use against or for the sovereign, even after they have contracted to enter the civil state. Thus, the sovereign cannot ensure that all of its orders are obeyed. To ensure obedience, the sovereign must win over the multitude's obedience for each decision. To ensure state's power, the sovereign must obtain cooperation. The fate of the state thus remains in the hands of the multitude of individuals, whose power, although small, is their own. As long as the sovereign fails to obtain this effective power, sovereignty is lost, the contract is broken, and the 'state of nature' returns.  

While Hobbes argues that the moment of transfer of legal sovereignty from the multitude to the sovereign solved the problem of the state of nature and created a powerful civil state, Spinoza disagreed. Spinoza writes that, "The sovereign powers possess the right of commanding whatever they will only for so long as they do in fact hold supreme power." Effective power, the ability to command the actions of the multitude, is the mark of sovereignty. For Spinoza, the problem of politics and the problem of the state became the problem of organizing the passions of the multitude at every moment. Instead of transferring sovereignty once and for all, the multitude retains their power. Thus, for Spinoza, the power of the sovereign state is a function of the power of the multitude, which can use their power for or against the state. Individuals continue to follow their own appetites and views of the world. If the state does not coordinate these views, and encourage 'reasonable' and non-violent, non-egoistic appetites, then the chaos of the state of nature will return and is in fact a constant possibility. The aim of politics changes for Spinoza:  

To guard against all these dangers, to organize a state in such a way as leaves no place for wrongdoing, or better still to frame such a constitution that every man, whatever be his character will set public good over private advantage, this is the task, this the toil.  

For Spinoza, right is coextensive with power and desire. To the extent these weak individuals retain any amount of power; they always retain some right against the sovereign.  

Where this leads is not to Spinoza articulating a right to resistance. He, like Hobbes, is interested in creating a strong civil state. Rather, this model changes the problem of government. We cannot, as Hobbes does, understand the power of the

37 Spinoza, Theological-Political Treatise. (Indianapolis: Hackett, 2001), 17, 254.  
39 Spinoza, Theological-Political Treatise, 16, 177.  
41 Spinoza, Theological-Political Treatise, Chapter 17, 538.
sovereign as obtaining the effective power of the contracting individuals. Human individuals cannot, Spinoza argues, transfer their power and will to the sovereign with a mere promise. Individuals retain some of their power, and the problem of government becomes how to manage this power of the multitude, how to create institutions which will wrangle the power of the individuals in the multitude to be used for the ends of the state.42

Entering the civil state, for Spinoza, means that individuals coordinate their behavior and their ends in some sense. They can do this by aligning their affects through coordinating their ‘imaginative’ views of the world and themselves, and through the social or the community.43 On a Spinozan view, how one imagines oneself and those things that increase the power of the body shapes one’s picture of the world. Our ‘picture’ of the world is just a revisable set of images which one uses to get around in the world.

We develop this imaginative view through interaction with other things, especially other individuals like us. We are not isolated, and there is no real state of nature. Positing such a state, where individuals’ desires seem to come from nowhere leads us in fact to fundamentally misunderstand how our desires and imaginative views of the world and ourselves are caused. We increase our power in the social world, through increasing those interactions with others that increase our esteem. We can increase our power by bringing about what we imagine others desire and what we ourselves desire, by strengthening our self-conception and joining with others. Spinoza explains that one’s conatus is shaped socially. One’s image of oneself is a product of interaction with others. The desires of the self move outward toward others. If they are like us (in some respect), we take up their desires as desirable. Spinoza’s social theory builds from this reciprocal interaction between the images, emotions and desires of those in a community. These individuals in the state of nature are understood as having idiosyncratic pictures of the world. However, in joining together for common purpose, their pictures begin to merge – they begin to see the world and themselves differently because of reciprocal interactions with others.


IV. Social and Political Life

Organizing political society requires some way of unifying the effects of the individuals in the multitude. Spinoza argues that we can organize the multitude through shared religion, norms, common symbols and laws that motivate individuals’ affects. In the *Theological-Political Treatise*, Spinoza gives the example of Moses, who introduced a religion as a way to organize the effects of the multitude. Having just emerged from slavery, the Hebrew people were weak, fearful, and unused to organizing their own lives.⁴⁴ Rather than institute the renewed slavery of despotism, Spinoza writes, Moses, “made laws and ordained them for the people, taking greatest care that they should be obeyed willingly and not through fear...Moses therefore introduced a religion, so that people might do their duty from devotion rather than fear. Further, he bound them over by benefits and prophesied many advantages in the future.”⁴⁵

The problem of the state is transformed in Spinoza into a problem of how to unify the individuals in a state through the organizing of the affects and the agreement of the imagination. A 'collective' or shared imaginative view of the world can be created through unifying the effects of the multitude. This does not necessarily mean that the members of a society need believe in imaginative beings or have shared fantasies in the everyday sense of ‘imaginative’. Rather, for Spinoza, imaginative views, as discussed above are the ‘less than adequate’ views one might have about the world. Thus, all non-adequate views of the world will be ‘imaginative’ views in Spinoza's terminology. By using the term 'imaginary' to describe these collective views of the world, Spinoza means to include the 'affective' dimension of non-adequate views of reality.

Creating a shared imaginary is a political tool to coordinate the effects of the multitude so that the state can use the power of the multitude for common ends.

Just as Spinoza’s human individual has an index of power related to that individual’s ability to organize his or her affects and through the individual’s self-conception and understanding of what increases their power (conatus), so too the state has a similar index of power. The state, for Spinoza, is a complex individual of a higher order than the human individual, but with similar problems of organization.⁴⁶ Just as the human body is complex and pulled in different directions by the forces acting upon it, so too the state is made up of parts -- human individuals -- who are themselves pulled in different directions by external and internal forces. To unify the state, to make it into an individual, the motions or emotions of its parts must be organized or coordinated. Now, just as for the individual, one cannot make a leap directly to reason. Power must be increased through the affects. So most states begin

⁴⁴Spinoza, *Theological-Political Treatise*, TTP, Chapter 17, 539.

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as communities that are organized affectively. Through common love or fear, individuals join together for common purpose and to increase their power.\textsuperscript{47}

Just as an individual can increase their power through active affects, so too states can become more powerful. States can develop.\textsuperscript{48} While they may begin as social collectives bound by shared religion, passion, or customs, they can come to critique and reform these practices and develop laws based on reason. Thus, the state can follow the path of empowerment just as individuals can, by: 1) organizing its affects and coordinating the individuals within it, and 2) by making those affects active, through understanding them and through focusing on the active affects, which increase its power. 3) the state can come to organize itself maximally well, that is, according to reason. Since Aristotle, political philosophers have understood ‘the state’ or ‘the political’ as a space where social practices and customs can be questioned and reformed. Spinoza continues this tradition. The most powerful, or best state is the one that has laws and institutions based on reason and thus, that yield the ‘best’ for those within the state.

V. Power and Inclusion

How can one mobilize the power of the individuals for the power of the state? We cannot, Spinoza argues, merely sum the power of the individuals for the power of the state, or assume their power through a verbal transfer or agreement. Such agreements are only as strong as the individuals’ continuing motivation to uphold them. Humans are moved by their individual appetites, which are internally complex.\textsuperscript{49} This complexity leads humans to be inconsistent and therefore unreliable.\textsuperscript{50} Agreement is not so simply achieved, as Spinoza believed the contract theorists, even Hobbes, were guilty of presuming. Hobbes’ view suggests that by transferring their right, individuals are then obliged to use their power in the service of the state. Spinoza insists that right and power are coextensive, and that the judgment of an individual cannot be guaranteed in advance.\textsuperscript{51} If one transfers their right in advance, their power had better be used at the same time. There is little guarantee that this same individual will use his or her power when you really need it.

Contracts, for Spinoza, are made to be broken, and broken they will be. Unless of course, you set up a series of institutions which have affective incentives that can guarantee that the individual would be more likely to come through in the end. If you want to compel people’s power to be used for the end of the state, you need to understand how individual power can be compelled, and for this, we return to Spinoza’s affective-imaginative understanding of individuals, which I outlined above.

\textsuperscript{47}Spinoza, \textit{Ethics}, E4P37S, 339-340; Love is preferable, E4App.11, 359; TTP 17, 548; Spinoza, \textit{Theological-Political Treatise}, TTP, Chapter 17, 548; Spinoza, \textit{Ethics}, E4Appendix16, 360.


\textsuperscript{49}Spinoza, \textit{Ethics}, E3P17S, 287-288; E3P51, 303-304;E4App27, 361.

\textsuperscript{50}Spinoza, \textit{Theological-Political Treatise}, TTP, Chapter 17, 537-8.

\textsuperscript{51}Spinoza, \textit{Theological-Political Treatise}, TTP, Chapter 16, 527.
For Spinoza, the problem of the political state is one of managing the effects of those within its boundaries, and those outside its boundaries who are potential enemies. The interpretation of Spinoza’s ethical and political theory that I have presented provides us with what we can think of as a principle of inclusion.

In its negative aspect, the principle suggests that when we have social or political problems (unrest, excessive crime, and lack of respect for the law) it is most likely because of those we have excluded. Something in the policy of the state has created a class of what Spinoza terms ‘enemies of the state,’ that is, those who have nothing to hope or fear from the state.52 These enemies include those who have turned against the state due to indignation.53

According to Spinoza, we need to worry about the excluded, the enemies of the state, and we need to do so in two ways. First, we have to worry about their negative passions and whether or not they could cause harm to the state. Second, from the standpoint of the best state, we need to worry about the opportunity costs of not including them in the state; that is, we need to account for the power we waste by not including individuals whose increased power could benefit the state.

In its positive aspect, Spinoza’s inclusion principle provides us with the normative model of the ‘best’ state, which in Spinoza’s terms is also the most absolute state, the strongest and most effective state. An absolute state is one that is participatory and inclusive and one in which the power of those within it is maximized. This model provides us with a conception of what the state would be if all citizens were included and active participants in the state, with their affects maximally active. Because the power of the state is a function of the power of the multitude that makes it up, the state must somehow care for or care about the power of individuals. Many states have not understood this properly, and have believed that they needed to limit the power of the people, not recognizing that the power of individuals, if maximized, if increased, could yield a more powerful state.

Strong states require that the multitude of subjects and rulers identify their ‘best’ with the ‘best’ for the state, so that they will use their power to support it. Spinoza writes that democracy is the most absolute form of state.54 In the democratic state, maximally inclusive participation in governing bodies makes possible communication among the entire multitude, creating the conditions for maximal individual and state empowerment.

VI. The Power of Fear

Hobbes and Spinoza disagree on the power of fear. For Hobbes, as long as the sovereign is powerful enough to overawe the multitude, to make them fear the power

52 Spinoza, Political Treatise, TP 2.14, 686; TP 3.8, 692-693.
54 Spinoza, Political Treatise, TP 11.1, 752.
and punishment for breaking the law, the state would be stable. The stability of such a state was built on the assurance that inside each individual subject was an internal scale. If the sovereign’s power were fearsome enough, the scale would be tipped in favor of following the sovereign’s command over any other appetite the individual may have to do otherwise.

Spinoza doubted the power of fear. Fear, he thought, was an unreliable affect. For Hobbes, fear and joy may lead to different outcomes, but they are just varieties of perturbations, leading to different possible outcomes. The outcomes may differ in their usefulness, but the affects were just means to those ends, and neither good nor bad, neither empowering nor enervating in themselves. If anything, Hobbes believed fear was the more reliable affect for obtaining the loyalty of the subjects, since humans were fickle, and their love was less easy to retain. However, for Spinoza, fearful affects seemed to decrease the individual’s power, to make them less able to make good decisions and more likely to believe and to follow any path, however misguided or contrary to their own interests. In the *Theological- Political Treatise*, Spinoza writes, “Fear engenders, preserves, and fosters superstition.” Those possessed by fear, he argues, “are swayed this way or that by the slightest impulse…Even the most trivial of causes are enough to raise their hopes or dash them to the ground.”

In the *Ethics*, Spinoza incorporates this insight into his mature theory of the affects. He proposes in Book 3 of the *Ethics* that there are two types of affects: the passive affects, like fear and sadness, and the active affects like joy. The former decrease our power, while the latter increase it. Whatever produces joyful affects increases the power of the body, and therefore the power of the mind. Whatever produces sad or fearful affects decreases the power of the body to act and to think. Thus, in the *Ethics*, Spinoza develops his earlier insights about the tendency of some affects to increase the power of an individual, and others to decrease one’s power into a fully embodied conception of the affects, derived from his study of Hobbes. Spinoza argues, following Hobbes, that even ideas and imaginations are embodied. All knowledge comes through the body, through its affections. These affections are felt as emotions, and mark some things as ‘good’ and others as ‘bad’ depending on how they affect us.

Spinoza’s insight about the disempowering nature of fear led him to critique Hobbes’s conception of the foundation of the political state. Fear alone is not enough to guarantee that the subjects would follow the sovereign’s command, since fear of the sovereign could lead them to just about any action. Fear, for Spinoza, decreases human power of action and judgment, leading individuals to unpredictable courses of action. Fear could never be the foundation of a stable political state. In an autocratic state such as Hobbes proposes in the *Leviathan*, those subjects overawed by fear of the sovereign may obey the law for some time; however, their fear could also lead

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55 Spinoza, Theological-Political Treatise, TTP, Preface, 389.
them to rash actions against the sovereign, the object of their fear. Fear overcomes reason. Even the slightest hope of overthrowing the sovereign, however unlikely its success, might be enough to entice these weakened subjects to revolt. The sovereign in such a state would be like a cowboy wrangling a herd of scared steer. In such a fearful state, the animals are as likely to stampede or scatter as anything else.

For Spinoza, founding a state on fear was unreliable for another reason. Fear not only leads individuals to make poor decisions, but individuals who are constantly fearful are weak, since fear decreases individual power. Since fear undermines power, even if a sovereign were able to keep the multitude in perpetual fear, these subjects could never be particularly useful to the sovereign, since they would be weak, their natural power undermined by fear. A powerful state needs powerful citizens, individuals who can work together to attain their collective ends. Those possessed by fear are fickle, superstitious and weak. A commonwealth made up of such beings would be similarly weak. Fear, thus, for Spinoza is a bad motivator of people and a force that disempowers the multitude. A powerful state can never emerge from a herd of scared animals.

Creating a strong state requires developing institutions that increase the power of individuals in the multitude while leading them to develop collective ends. Democracy is the only variety of commonwealth that could increase the power of the citizens while increasing its own power, and so, Spinoza writes that democracy is the most powerful and best kind of dominion.

VII. The Best State

For Spinoza, the best state is not one in which people are forced to do their duty out of fear, or one in which peace is achieved at the cost of freedom. Of the state, Spinoza writes:

Its ultimate purpose is not to exercise dominion nor to restrain men by fear and deprive them of independence...Thus, the purpose of the state is in reality, freedom.

For Spinoza, without freedom, individuals cannot begin to understand themselves and maximize their power. If they live in fear, a passive affect, their power will further be weakened. In a bad state, the individuals that make up the multitude are weak, and thus this kind of state is weak. Even if, for example, a despotic state was able to get people to follow the law and in addition joined the imaginative views of this disempowered multitude with a shared religion, Spinoza argues, that it could not be counted as the best sort of state. If, as in a despotic regime, the people are organized through fear, or through a religion that encourages this fear and discourages the

58Spinoza, Short Treatise in Shirley (2002), ST Pt. 2, Chapter 21, 92-93; Spinoza, Ethics, E4P6, 325; Spinoza, Theological-Political Treatise, TTP, Preface, 388.
59Spinoza, Theological-Political Treatise, TTP, Chapter 20, 567.
60Spinoza, Political Treatise, TP 5.4, 700.
means to dispel fear, the power of the state will be less than what it could be if this same multitude had been empowered instead of oppressed. Despots relying on fear to motivate obedience will be drawing on the power of fearful and weak multitudes, making them less than optimally powerful. Peace, Spinoza writes, is not just the absence of war, and the strong commonwealth is characterized by more than just obedience to the law.\footnote{Spinoza, Political Treatise, TP 5.4, 699. Spinoza continues: “When, then, we call a commonwealth best where men pass their lives in unity, I understand a human life, defined not merely by the circulation of blood, and other qualities common to all animals, but above all by reason, the true excellence and life of the mind.” Political Treatise, TP 5.5, 699.}

For Spinoza, the best state is one that allows people the maximum freedom to increase their power, through understanding themselves and the world. Spinoza’s theory of individual empowerment and how individual power accrues to the state suggests that maximal inclusion and political participation contribute to making the state more stable, and stronger than states with less participation, which exclude more of their citizens from active participation. Strong free democratic states were, for Spinoza, the ‘best’ kind of states, not just because they empowered their inhabitants, but also because empowered citizens make them stronger.

In a Spinozan democracy, agreement is achieved is not through shared religious dogma or symbols, but through maximal inclusion and participation in a deliberative assembly. Because of this kind of institution, all individuals in the multitude have something to hope for from the state. Because of the nature of deliberation, in Spinoza’s view, such assemblies have the possibility of coming up with better and more reasonable laws than any of the individuals on their own. Through deliberation in large councils, human individuals come to understand that their own particular views may not be the only ones possible. This yields some modicum of reflection, if only to convince others of one’s view. Thus, for Spinoza, agreement is not guaranteed, but rather is the goal of the best state. The strongest agreements are based on reason. For agreement to be based on reason, the state must ensure the empowerment of its population, particularly if that state is a democracy. Spinoza’s conception of agreement and reason aims at human empowerment rather than exclusion and oppression.

The aims of democracy, in Spinoza's view, are both epistemic and affective\footnote{[Citation removed for blind review]} through including as many individuals as possible, the decisions of a democracy are based on the collective knowledge of its people. Through requiring the assembly to come to collective decisions, democracies encourage discussion, which in Spinoza's view leads to both better decisions and a collective conception of oneself as part of the state, with stakes in the outcome of democratic decisions. Extended arguments for this conception of democracy are necessary, but beyond the scope of this article. For Spinoza, maximal inclusion yields the 'best state'; we are concerned here with minimizing exclusion in order to avoid the worst state -- those with numerous internal enemies.

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VIII. Exclusionary Outcomes: Enemies of the State

A recent report published by the Pew Center on Public Safety Performance\textsuperscript{63} reported that one in every 99.1 American adults is imprisoned, making the United States the ‘world’s incarceration leader’\textsuperscript{64} with 2,319,258 adults in prisons and jails. For some groups, this percentage of adults imprisoned is even more distressing. Among African American adult males, one in 9 is imprisoned. Among Hispanics, one in 15 adults are imprisoned. Despite heavy spending on criminal prosecution and imprisonment, Pew researchers write, “recidivism rates remain stubbornly high.”\textsuperscript{65} Despite having a large percentage of the population in prison, it would appear that crime is not prevented, and the collective goal of public safety is not reached. In analyzing these results the researchers at Pew stress the importance of reconsidering mandatory minimums sentences and considering sentencing alternatives other than prisons. However, the causes of crime, what leads people to break the law, are not addressed directly.

For Spinoza, having this percentage of its population behind bars makes the U.S. a ‘bad’ state. A bad state, for Spinoza, is one in which the law is not respected, which for Spinoza, suggests that the laws are badly implemented. A bad commonwealth, where all live in fear, Spinoza writes, is no better than the state of nature.\textsuperscript{66} Fear is a tool of those governments or forms of dominion that are weak and thus have reason to fear the power of the multitude. A bad commonwealth, in this sense, is a weak commonwealth. Governments that fear their own people are constantly plotting against them, wasting their energies and resources fighting and repressing their own people.\textsuperscript{67} They also waste the energies of their own people, who could be working for the goals of the state if properly channeled. The state, by designing its laws and customs in a certain way has caused a great percentage of its population to become internal enemies. Spinoza understands ‘enemies of the state’ as those who have nothing to hope or fear from the state. People who break the law fit this description. Having a large percentage of such people is worrying.

Spinoza does not end here, just noting that enemies of the state are dangerous, but argues that a good state must minimize its enemies by leading through hope as well as fear.\textsuperscript{68} A good state minimizes its enemies not by locking them all up or killing them, but rather by offering them incentives to align themselves with the state rather than against it, and by understanding what affective-imaginative events have caused their becoming oriented against the state. Spinoza encourages us to see

\textsuperscript{64}Globe and Mail Update, “1 in 100 Americans in prison: study,” February 28, 2008.
\textsuperscript{66}Spinoza, Political Treatise, TP, 5.2, 699.
\textsuperscript{67}Spinoza, Theological-Political Treatise, TTP, Chapter 17, 538; Spinoza, Political Treatise, TP 5.7, 700; TP 4.4, 696-697.
\textsuperscript{68}Spinoza, Theological-Political Treatise, (Hackett, 2001), TTP 17, 185-6.
problems of crime, violence and chaos as problems of affect and exclusion that it is the job of political institutions to solve and to understand.

Factions, rulers behaving badly, and bad laws -- all of these things can undermine the power of the state.\(^69\) Factions, which form for all sorts of reasons that we can also understand in terms of affect and imagination, draw individuals into groups oriented toward their own goals and projects. They generally form because individuals have been excluded or at least not properly included in the state; they join together because of this common exclusion and the affective and imaginative (or historical) basis of this exclusion. Factions are groups that see themselves as in some ways opposed to the state. The job of the state, according to Spinoza, is first of all to try and minimize factions by avoiding such exclusions and by trying to create affective incentives to encourage individuals to follow the law willingly and to identify with the state.\(^70\) To do so, the state must understand people as imaginative and affective, and must understand how their affects are organized and how they see themselves and the state. Then, the state must understand how to include them, through imaginative and affectively effective institutions. By understanding the role of imagination, of identity and of affect in creating a multitude whose power can work for the state, we can perhaps begin to solve these problems with the proper affective and imaginative solutions.

Rulers behave badly in two ways: when they act in a manner that disrupts the commonwealth and causes indignation in their personal life;\(^71\) more importantly, they undermine the power of the state through bad laws. Although a reckless tyrant with a notorious personal life may diminish respect for the ruler, bad laws do much more damage to the power and stability of a government. Bad laws, in Spinoza’s view, are laws that cannot be enforced through threats or enticements.\(^72\) One cannot, Spinoza argues, “make a table eat grass”, by which he means that there are some things which both cannot be done and thus ought not be required, just as there are some things which cannot be omitted, and thus ought not be prohibited. One can prohibit and require all one likes, that is, rulers may propose laws regulating and requiring whatever they wish. However, a ruler can only effectively legislate what is possible to enforce, and what is possible for those subject to the law to do or not to do. Spinoza writes, He who seeks to regulate everything by law will aggravate vices rather than correct them. What cannot be prohibited must necessarily be allowed, even if harm often ensues.\(^73\)

\(^{69}\) Spinoza, *Theological-Political Treatise*, TTP, Chapter 17, 538; TTP, Preface, 389; TTP, Chapter 20, 567-568; Spinoza, *Political Treatise*, TP 4.4, 696-697.

\(^{70}\) Spinoza, *Theological-Political Treatise*, TTP, Chapter 17, 538; Spinoza, *Ethics*, E3P27, 292; E3P27S, 292.

\(^{71}\) Spinoza, *Political Treatise*, TP, 4.4, 697.

\(^{72}\) Spinoza, *Theological-Political Treatise*, TTP, Chapter 20, 566-7; Spinoza, *Political Treatise*, TP, 4.4, 697.

\(^{73}\) Spinoza, *Political Treatise*, TP, 4.4, 697.
Bad laws, for Spinoza, are those that attempt to prohibit actions that cannot be prohibited, because they prohibit actions that are not in the power of (most) individuals to control. Since such laws punish what cannot be controlled, they ensure both that the laws will be flouted and unenforceable. Both of these outcomes undermine the power of the state, and thereby the ability of the state to encourage human flourishing.

In the "Political Treatise," Spinoza provides a prescient example of what he considers a ‘bad law’. In that work, Spinoza proposes that the vice of drunkenness cannot be prohibited or stopped by laws, so it is a mistake to regulate it by law. Prohibition in the United States and the continually failing war on drugs might provide examples of how such laws are 'bad' in a variety of ways. In Spinoza’s view, these laws seem to misunderstand human desires and express an ignorance of the physical control of lack thereof of involved in these vices. For Spinoza, laws that try to control human emotions and desires, particularly those that attempt to control what we might think of as addictions over which addicts have little control, are nearly as ridiculous as laws requiring that humans fly by flapping their arms. The better we understand the affective causes of human behavior, the better we can formulate our laws. When we fail to understand human desires and emotions, the more likely we are to propose and waste our resources enforcing bad laws. If humans cannot control their desires for drink or drugs, then they become criminals, and flout the laws of the state; as the laws of the state are flouted, and the number of criminals or enemies of the state increases, the state has to expend enormous and ultimately wasted resources on prosecuting and enforcing unenforceable laws. Ignorance of human nature is expensive and is bought at the price of stability and freedom.

Spinoza’s most extended discussion of bad laws focuses on the question of freedom of expression and judgment, which the governments of his time desired to curb. In the "Theological-Political Treatise," Spinoza argues that laws prohibiting the freedom to express one’s views and to philosophize are ultimately detrimental to the power of the state. Laws prohibiting freedom of judgment and expression are detrimental to the state because, Spinoza argues, they cannot be enforced. No individual can give up their ability to judge for themselves or to speak their opinion. No matter how powerful a sovereign ruler, Spinoza writes, “They will never succeed in preventing men from exercising their own particular judgment on any matter whatsoever and from being influenced accordingly by a variety of emotions.” Spinoza further argues that just as humans cannot control their judgments, so they cannot control their expressions of these judgments. By attempting to prevent individuals from judging and speaking their views, a state creates enemies and undermines the ‘good faith’ of its citizens. Those who disagree with the state are forced to pretend otherwise, and thus, a state’s best citizens are reduced to

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75 Spinoza, *Theological-Political Treatise*, TTP, Chapter 20, 566.
76 Spinoza, *Theological-Political Treatise*, (Hackett, 2001), TTP 20, 222.
‘sycophancy and treachery.’ If good and thoughtful citizens speak out and are punished for their ideas, this will lead, in Spinoza’s view, to the ruin of the state. Spinoza writes:

The greater the effort to deprive them of freedom of speech, the more obstinately they do resist … Men in general are so constituted that their resentment is most aroused when beliefs which they think are true are treated as criminal… In consequence, they are emboldened to denounce the laws and go to all lengths to oppose the magistrate, considering it not a disgrace but honorable to stir up sedition and to resort to any outrageous action in this cause.

Laws requiring belief or prohibiting it turn all of the states’ citizens into potential enemies. By prohibiting that which cannot be effectively prohibited, bad laws undermine the power of the state and the loyalty of its citizens. Prohibiting freedom of expression and judgment leads directly to dissent, faction and rebellion. Thus, in Spinoza’s view, such laws are ‘bad’; they are ruinous to the commonwealth and its citizens. Instead of prohibiting what humans cannot change, Spinoza suggests that the best laws are those that are determined by the people themselves. Therefore, he thinks democracy is the best form of government. Including the multitude in the decision making process in the form of a democratic states is the best way to achieve peace and power. Democracy, the most inclusive form of state, is Spinoza’s solution to the problem of ‘bad laws’, ‘factions’ and ‘rulers behaving badly’.

IX. Conclusion: Affective Disorders of the State

Spinoza’s understanding of power and affects both in individuals and in political communities allows us to reorient our thinking about some of our most pressing political problems. When rulers wreak havoc or parts of the citizenry disobey the law, the problem, for Spinoza, is not the individuals. Individual humans, rulers and citizens, are everywhere the same. They will always seek what appears to be good for them, whether they are right or wrong. The problem is the state and its laws and customs. The task of the state is to organize the passions of the multitude of individuals within the state and its rulers to obey the law. Bad laws and customs yield disorder. Bad laws are ineffective at creating order and contributing to human flourishing; however, they are remarkably good at alienating citizens by arousing their indignation. Bad laws create, in other words, enemies of the state.

77 Spinoza, Theological-Political Treatise, TTP, Chapter 20, 569.
78 Spinoza, Theological-Political Treatise, TTP, Chapter 20, 569.
79 Spinoza, Theological-Political Treatise, TTP, Chapter 20, 569.
80 Spinoza, Theological-Political Treatise, TTP, Chapter 20, 570-1.
81 Spinoza, Theological-Political Treatise, TTP, Chapter 17. 548-9.
82 Spinoza, Political Treatise, TP 3.8, 692-693; TP 3.9, 693; TP 4.4, 696-697.
The internal enemies of the United States, our millions of citizens jailed, return to our communities. And what do they find there? They are, for the most part, excluded from political participation, they cannot vote. They are excluded from participation in public life in other ways depending on the state and local ordinance. They have difficulty finding jobs, they cannot get student loans, and in general they continue to be punished long after their sentence is served.

For those seeking harsher punishments than even these, the purpose of this article may be suspect. Does a Spinozan view suggest that there should be no punishment? Should we throw open the jails and expect a peaceful and just outcome? If so, it would appear this view suffers from delusional optimism and is unworkable in our times because of just those affective disorders it diagnoses. However, Spinoza's approach should be understood not as a theory of criminology, but rather a political theory that shines a light on the role of prisons, crime and affective disorders within the state. If we wish to prevent crime and other affective disorders, Spinoza suggests, mass exclusion, in the contemporary form of prisons, may not achieve the end we seek. Imprisonment, along with other forms of political, social and economic exclusion creates enemies of the state.

Enemies of the state, those who have nothing to hope or to fear from the state – these are forces which the state must fear and secure itself against. Those who have been in prison no longer have much to fear from the state and if we send ex-convicts out into the world, without opportunity for living a normal life, then except under the rarest of situations, they will continue to worry us either through recidivism or through our fear. Branded as convicts they may have nothing to hope from the state; having already experienced prisons, they have less to fear. These 'enemies' with nothing to hope or fear from the state should worry us; finding ways to productively include them, thus offering them hope, provides a real solution to this genuine problem. Providing hope, on Spinoza's view, is also better than finding additional ways to frighten ex-convicts. As discussed above, those who are overwhelmed by fear are unlikely to act rationally. As an active affect, hope increases individual power. Hope, although it is not to be counted upon in all scenarios, is better than fear, which is always debilitating, in Spinoza's view.

Our enemies do not disappear. Excluding them only increases their danger. Spinoza’s focus on the affective foundation of social life and his view that the primary problem of political philosophy is to create institutions and practices that organize the effects of the multitude recognizes this need not to make enemies of citizens, and to find ways to include those who could become our enemies.

Criminals, of course, are just one of the many ‘enemies’ that a state creates. Living in an increasingly globally interconnected world with a substantial democratic deficit at the state and international levels, those countries with the power to create policies that reverberate beyond their borders regularly create external friends and enemies. Those excluded from political, social and economic power in other ways can also be considered enemies of the state. Enemies weaken the state, since all enemies,

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however weak, still retain enough power to destabilize the state. Spinoza’s critique of Hobbes’ social contract suggests that whatever power the state cannot accrue to its ends remains as a constant source of potential fear. Consider our contemporary fear of the suicide bomber, perhaps part of a collective moment, perhaps not. A single individual, the suicide bomber, has inspired the building of massive borders between states, enormous spending on security, rolling back of centuries-cherished civil liberties and an extra-legal international apparatus of punishment and surveillance about which we all have much to fear.

A state, and a people, in a constant condition of fear is weak, and wastes its power, Spinoza warns. Thus, Spinoza encourages inclusion -- not just because human empowerment relies on participation in communal life and the help of others, but also because excluding these people further makes them our enemies. Enemies weaken the state causing states and citizens to worry about them; wasting time and energy building more prisons, creating surveillance techniques, employing armies of police, and pursuing policies that undermine the state’s legal structure and civil liberties.

By making citizens into criminals we lose their potential as good citizens. These are the opportunity costs of creating enemies. Instead of using their power for the good of the state, we encourage indignation and dissent. We have seen ample examples of criminalizing and excluding some of our best and brightest citizens in the recent panic over the Occupy movement. Instead of taking the mass protests across the globe as evidence of a powerful message from their citizens, countries like Canada, the United States and others have sought to criminalize protesting. By seeing all citizens as ‘potential enemies’ states discourage loyalty and identification with the state, thereby diminishing the potential power of the state. In this way, Spinoza alerts us to the opportunity costs of a non-participatory state and policies that create such enemies of the state.

Those we exclude diminish our power by making us weak and suspicious. Excluding them robs us of the power they could supply as productive fellow citizens. Spinoza teaches us that we cannot transfer the power of the multitude to the state in one fell swoop or through a contract. Rather, the power of the multitude must be cultivated and organized. This power must be oriented so that the power of the multitude can be used for the strengthening of the state, which in turn empowers individuals. In this way, Spinoza shows us how political stability and human empowerment are inextricably linked, and how the disempowerment of some affects the power of all.

BOOK REVIEWS


THE ONCE-FAMOUS novelist Gore Vidal maintained that, in an age in which fiction has lost its authority, "famous novelist" no longer has meaning. "To speak today of a famous novelist is like speaking of a famous cabinetmaker or speedboat designer," he said.

Nevertheless, during the last decade of the 20th century, Salman Rushdie was not just a famous novelist; he was more familiar to more people than even O.J. Simpson. Winning the Booker Prize in 1981 for his second novel, "Midnight's Children," enhanced Rushdie's literary reputation, but it was his 1988 novel "The Satanic Verses" that catapulted him into celebrity, and forced him into hiding.

On Feb. 14, 1989, the Supreme Leader of Iran, the Ayatollah Ruhollah Khomeini, issued a valentine in the form of a fatwa: "I inform the proud Muslim people of the world that the author of the 'Satanic Verses' book, which is against Islam, the Prophet and the Qur'an, and all those involved in its publication who were aware of its content, are sentenced to death." A native of India residing in England, Rushdie had no ties to Iran, but Khomeini's order made him the world's top terrorist target. Anyone killing the author of "The Satanic Verses" could count on a bounty of millions of dollars, as well as admission to heaven.

Like the Dreyfus Affair, the Rushdie affair has inspired commentary both sympathetic and hostile. However, "Joseph Anton" is the author's own riveting account of how it felt to be reviled and endangered by violent strangers because of a book that most had never read.

United Kingdom Special Branch officers took charge of his protection, dubbing their risky work Operation Malachite. When they demanded a code name to confuse potential assassins, Rushdie combined the given names of two favorite writers: Conrad and Chekhov.

"Joseph Anton" begins in 1989, "the year the world changed," before flashing back to Rushdie's nominally Muslim childhood in Bombay. The son of a freethinking, alcoholic wastrel, he inherited a commitment to "human reason and against blind faith, submission, acceptance and stagnation." At school in England, the ugliness of the Rugby Chapel reinforces his religious skepticism: "Obviously no self-respecting God would live there - in fact, obviously there was no God, not even a God with bad taste in architecture." After eating a ham sandwich, he is not struck dead with thunderbolts, convincing him "that there was nobody up there with thunderbolts to hurl."

Working for an advertising firm in London, Rushdie struggles to establish a literary career. But the body of this hefty memoir focuses on his years as Joseph Anton, when Rushdie feels imprisoned not only by armed guards who keep him

¹The review was first published in SF Gate, September 21, 2012, reprinted with the permission of the author.
quarantined but also by his unwanted identity as the Man Who Maligncd Islam. He is forced to move frequently from residence to residence whenever his cover is blown. He has to plead for permission to see his son Zafar, the child of his first marriage and the most precious person in his life.

When the fatwa is issued, Rushdie's second marriage, to American novelist Marianne Wiggins, is crumbling, and the pressures of living under siege hasten her exit. Rushdie woos and marries his third wife, Elizabeth West, under the supervision of Special Branch guards. She gives him a second son, Milan, but cannot keep him from falling for Padma Lakshmi, a moody beauty who embodies for him the romantic dream of American freedom. She dumps him eight years later. "You saw an illusion and you destroyed your family for it," Elizabeth tells him, and Rushdie cannot disagree.

Some of Rushdie's warmest relationships are with members of his protection team, who serve as constant companions throughout the ordeal. Their supervisors, though, are antagonistic, imposing arbitrary restrictions on Rushdie's movements and insisting that he is not worth the huge expense incurred by Her Majesty's Government because of his nasty book.

Meanwhile, the Italian translator and the Norwegian publisher of "The Satanic Verses" are seriously wounded, and its Japanese translator is murdered. Muslims within Britain and abroad clamor for the author's death, and even fellow writers Thomas Berger, John le Carré, Roald Dahl and George Steiner cast aspersions on Rushdie's motivations and talents. However, Paul Auster, Margaret Drabble, Christopher Hitchens, Harold Pinter and other literary eminences provide the fugitive with places to stay, moral support and the balm of friendship.

Rushdie reopens his wounds by recalling how, in a desperate bid to placate his foes, he signs a statement proclaiming his embrace of Islam. Repudiating his own core beliefs does not get the fatwa lifted but leaves him filled with self-loathing. He does not reject Elizabeth's verdict that he is "a selfish person who goes through life ruining other people's lives." It is only after years fraught with pain, fear and violence that Rushdie is able, in his memoir's final line, to hail a cab alone on the streets of London.

Like Norman Mailer, another celebrity author who would surely envy him his historically momentous subject, Rushdie uses the third person to tell a fascinating story of his own clash with the forces of intolerance. Though Viking Penguin lost its corporate nerve over a paperback edition, he credits their earlier courage in bringing out "The Satanic Verses," calling it "one of the great chapters in the history of publishing, one of the grand principled defenses of liberty.

In 10 dramatic chapters, "Joseph Anton" captures the career of a fallible writer who struggled to sustain the fragile life of the imagination.

Dr. STEVEN G. KELLMAN, Professor, The University of Texas at San Antonio; he is the author of "Redemption: The Life of Henry Roth" (Norton) and "The Translingual Imagination" (Nebraska).

AS WE ARE building a just global village, which may also be called international community or world society, an essential part of our effort is to establish a justice system that has jurisdiction over the entire village and an indispensable component of this system is a legal mechanism that imposes duties and burdens on each and every family existing in this village that that they don’t commit to such serious crimes as crimes against humanity. These legal duties and burdens must be sufficiently stringent that either prevents familial criminals from gaining benefit from crimes against humanity or approximates the loss and pains the familial criminals inflicted on their victims. *Forging a Convention for Crimes against Humanity* is a project that embodies persistent effort in the development of international criminal law for the global village since the Nuremberg Trials and presents the outcome of scholarly collaboration worldwide and over one hundred years. The importance and significance this volume cannot be overestimated. It is a pioneer work in international law in a number of ways.

The first and the foremost contribution of this volume to the movement for global justice is the monumental piece “Proposed International Convention on the Prevention and Punishment of Crimes Against Humanity,” which constitutes a comprehensive international convention dealing with crimes against humanity, rendered in both English and French. Crime against humanity is the most heinous category of crimes; but it has not been dealt with effectively. A protection for threatened victims of crimes against humanity has not been effectively enhanced. It is no doubt that the Nuremberg Trials laid a solid foundation for dealing with crimes against humanity. The Nuremberg Charter included crimes against humanity as one of the three categories of crimes. However, unlike the cases of genocide and war crimes, there hadn’t since had an international convention codifying and developing customary law on crimes against humanity, which is obviously indispensable and long-wanting. This volume fills this vacuum in international law. The text of the proposed convention on crimes against humanity articulates and consolidates the category of crimes against humanity, enhances the principle of international accountability for mass slaugthers, facilitates the legal vehicle for international court to impose accountability on those who are responsible for crimes of this category, and enables relevant organizations at national and international levels to adopt appropriate measures of preventing crimes against innocent civilians.

*Forging a Convention for Crimes against Humanity* raises serious questions about global justice at international level, that is, about the legal mechanisms that hold a family rather than individuals accountable in our global village. The reigning
idea of legal theories is the doctrine of individual responsibility. That idea is now confronting a challenge from the idea of collective responsibility. How a family, rather than an individual, in our global village is held accountable for crimes? On what ground is the village’s humanitarian intervention into the territory of a family in our global village to be justified? Could the proposed international law apply to a terrorist network that possesses neither territory nor government and that operates across families in our global village? Questions like these demand intensive researches. *Forging a Convention for Crimes against Humanity* provides an outstanding scholarly contribution to the studies of international law, making it a valuable and essential resource for future studies.

Attached to the proposed convention is another important piece titled “A Comprehensive History of the Proposed International Convention on the Prevention and Punishment of Crimes Against Humanity” written by Leila Nadya Sadat, who has been the leading figure of this project. Fifteen thoughtful papers collected in this volume, which are written by prominent and leading experts in the field of international criminal law, address issues concerning the legal regulation of crimes against humanity and examine relevant social and historical contexts. These papers present best reflections on various aspects of crimes against humanity. Topics range from technical discussions of specific legal issues such as modes of responsibility, the responsibility to protect, amnesties and immunities, enforcement, and gender crimes to broader conceptual treatments of earlier codification efforts, the definition of the crime in customary international law, and the phenomenon of ethnic cleansing. Several of these papers cover the topic of ad hoc tribunal definition of crimes against humanity and the history of codification efforts. Many papers collected in this volume discuss specific topics such as universal jurisdiction, peace and justice dilemmas, the architecture of international criminal justice, modes of criminal participation, crimes against humanity and terrorism, and the interstate enforcement regime.

The movement for global justice on crimes against humanity is of course not merely an intellectual movement. *Forging a Convention for Crimes against Humanity* fills a vacuum in international law but it does not grow out of vacuum. The Nuremberg legacy discontinued or legged in its progress during the cold war; but the social movement for global justice on crimes against humanity revived by the end of the 20th century. This movement embraces such prominent events as the statute to establish an international criminal court agreed by 120 nations in Rome in July 1998, the arrest of General Pinochet accused for systematic use of torture, the war against former Yugoslavia to stop “ethnic cleansing” of Kosovo, UN-backed invasion of East Timor to stop massacres by militias in league with Indonesian army, the Hague Criminal Tribunal, etc. Cumulative human efforts of reviving the Nuremberg
legacy over twenty some years paved the road to the achievement of * Forgiving a Convention for Crimes against Humanity* that refines this important social movement toward completion of building a global village in its true sense.

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M. CHERIF BASSIOUNI is the author of 24 and editor of 43 books on International Criminal Law, Comparative Criminal Law, Human Rights, and U.S. Criminal Law; and the author of 265 articles published in law journals and books in the U.S. and other countries. These publications have been written in Arabic, English, French, Italian and Spanish. Some of them have been cited by the International Court of Justice; the International Criminal Tribunal for the Former Yugoslavia (ICTY); the International Criminal Tribunal for Rwanda (ICTR); the United States Supreme Court; the United States Circuit and Federal District Courts and various State Supreme Courts. Several of his works have been translated into: Arabic, Chinese, Farsi, French, German, Hungarian, Italian, Portuguese and Spanish.

In 1999, Bassiouni published *Crimes against Humanity in International Criminal Law*. This book significantly establishes the legal validity of the Nuremberg Charter and describes the evolution of “crimes against humanity (CAH)” from 1945 to the 1998 ICC Statute. The book’s comprehensive historical and legal analysis starts with the origins of this crime in the international regulation of armed conflicts and covers the Nuremberg, Tokyo and Allied Prosecutions after World War II, and subsequent national prosecutions, as well as the Statutes of the ICTY (the International Criminal Tribunal for the Former Yugoslavia), ICTR (the International Criminal Tribunal for Rwanda) and their jurisprudence, and the Statute of the ICC (the International Criminal Court). The book examines the ten different international legal formulations which were developed at that time, particularly their overlap with genocide and war crimes, and sorts out the confusion regarding the legal characteristics of this crime. The meticulous and thorough analysis of all relevant legal issues, many of which are not covered elsewhere, includes: principles of legality, criminal responsibility for decision-makers and others, command responsibility, obedience to superior orders and other defenses, specific contents and their counterpart in national laws, policy considerations, and the applicability of this crime to non-State actors.1 In 2010, in his article “Crimes against Humanity: The Case for a Specialized Convention,” Bassiouni emphasizes that If the adoption of a specialized convention on crimes against humanity is only capable of saving one life, then those who will have worked at bringing it about will share in the rewarding knowledge that their efforts are equivalent to having saved all of humanity. Experience, however, tells us that if such

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1 [http://books.google.com/books/about/Crimes_Against_Humanity_in_International.html?id=MbiedpEFzbYC](http://books.google.com/books/about/Crimes_Against_Humanity_in_International.html?id=MbiedpEFzbYC)
a convention is adopted and is enforced, even with limitations, it is likely to have a preventive and deterring effect that will save many lives. “In so doing, those who have contributed to the effort will have the reward of having contributed something of value to humankind, and they will also contribute to peace, because, ultimately, there is no peace without justice.”

In 2011, Bassiouni published a new book, entitled *Crimes against Humanity: Historical Evolution and Contemporary Application*. This book is his latest contribution to human justice. As a reviewer says: “The book constitutes a unique and comprehensive treatment of all legal and historical aspects pertaining to crimes against humanity in a single definitive volume.” This new book provides a historical review for the evolution of CAH and an analytical examination for the application of CAH. The author discusses the categorization of CAH in normative jurisprudential and doctrinal terms, and then examines the specific contents of CAH through international criminal tribunals, mixed model tribunals, and the International Criminal Court. He also attempts to justify CAH along with the history and jurisprudence of both international and national prosecutions. According to the author, this book is the result of his many years of work as an academic and as a participant in international legislative efforts. These experience were rich and rewarding and provided him with useful insights, which will benefit the readers. “This is a new book, not merely an update of previous editions of *Crime against Humanity in International Law*. This book includes all of the jurisprudential developments of CAH, from the post-World War II proceedings to the ICTY, ICTR, and ICC, as well as the mixed-model tribunals and relevant national prosecutions.” (pXIV) This 845 page book is divided into ten chapters.

In Chapter 1, the author discusses the nature of CAH and the element of the policy. For him, the past century witnessed more people killed in various types of conflicts and regime victimization than has ever occurred at any other point in the history of mankind. Most of the victimization falls within the meaning of CAH (p1). He includes analysis of the concept and characteristics of this element, the discriminatory element in “civilian population,” the crime’s historical connection to war, the policy connection between individual conduct and state policy in the London Charter, the imputability of individual conduct to the State, and the applicability of the policy requirement in the context of non-state actors. More significantly, the

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author concludes with some philosophical considerations (p50). In Chapter 2, the author contemplates Phenomenological and criminological considerations of CAH as a crime of state. He begins with an etiology of crimes of state, followed by phenomenological observations concerning the protagonists, neutralization, apathy, indifferences, passivity, de- and sub-humanization, objectification, and the “banality of evil.” According to him, “Crimes of state have, in some form or another, existed throughout human history and have essentially manifested themselves when the state’s organizational structure is under the control of tyrannical ruler or a ruling elite engaging in abuses of power” (p55). The author next focuses on the legal controls of crimes of state by considering legal philosophy and both international and domestic criminal law regimes. The author concludes by lamenting the historical enforcement gap of prosecuting atrocity crimes (p85).

In Chapter 3, the author examines the emergence of CAH in positive international law from the Law of the Charter to the post-World War II for formulations arising out the Charter: the IMTFE (International Military Tribunal for the Far East) and Control Council Law No. 10. He begins with the concept of “laws of humanity” in the history of the law of armed conflict. He claims that the genesis of CAH is in the Preambles of the First Hague Convention of 1899 on the laws and Customs of War and expanded in the Fourth Hague Convention of 1907 and in their annexed Regulations Respecting the laws and Customs of War on Land (p86). The author next addresses the London Charter, specifically Article 6(c), wherein CAH acquired its own identity. In his opinion, the initial methodological question discussed by the drafters of the London Charter was whether to have a generic definition of the crimes; a listing of specific acts constituting international crimes; or a combination of the two (p119). The analysis then shifts to post-Charter formulations that arose out of the Charter – the IMTFE and CCL 10. The author recalls that the united States revised its original American Drafts in a new Proposed Agreement of June 14, 1945, which referred to “Atrocities and Offenses against Persons or Property Constituting Violations of International Law, including the Laws, Rules and Customs of Land and Naval Warfare” (p120). The author concludes with the prosecutions pursuant to the Charters of Nuremberg and Tokyo and those of the CCL 10 Proceedings (p166). In Chapter 4, the author centers on post-Charter developments and is divided into two parts. Part A moves from the substantive developments of CAH from the ILC’s codification efforts from 1947 to 1996, to the Security Council’s codifications in the Statutes of the ICTY and ICTR, to the Rome Statute. He next considers the CAH prosecutions of the ad hoc tribunals, as well as the status of prosecutions at the ICC. The next sections considers other normative proscriptions applicable to the same protected interests as those protected by CAH. The subject of the penultimate section is the mixed-model
tribunals, including those of Kosovo, Bosnia and Herzegovina, Sierra Leone, Tumor-Leste, Cambodia, and Iraq. Part A ends with an analysis of CAH’s status as a part of jus cogens. Part B examines the post-Charter procedural developments, including the concept of aut dedere judicium, the duty to prosecute or extradite, the principle of non-applicability of statutes of limitations, and universal jurisdiction. For the author, “Arguably, prosecutions for CAH should be prioritized because of the principle aut dedere aut judicare, and, more generally, because international crimes form the foundation of the involvement of the international community and the creation of the Special Panels for Serious Crime as a hybrid court (p253). The author also provides his own concluding assessment of the post-Charter substantive and procedural developments (p295).

In Chapter 5, the author discusses the principles of legality in the London Charter and in post-Charter legal developments. He starts by examining the principles of legality in international criminal law. The Charter’s approach to the issue follows. The next section reflects on the Prosecution’s treatment of the question under the Charter, the IMTFE, and CCL 10. He next assesses legality issues in the post-World War II prosecutions. Interestingly enough, from a sense of legal philosophy, the author thinks that naturalists, relative positivists, pragmatists, and utilitarian’s all found common ground, albeit from different vantage point, in upholding the legitimacy of the London Charter, even though most acknowledged its technical legal deficiencies. The enormity of the human harm had helped to overcome concerns about legal imperfections. Thus, the facts shaped the outcome of the law (p311). He then finishes with an evaluation of the issue of legality in post-Charter developments of the ICTY, the ICTR, and the ICC (p358). In Chapter 6, the author analyzes the specific acts listed in the different formulations of CAH. After an introductory section on the meaning, method, and function of general principles of law, the specific crimes contained in the four primary formulations of CAH, including murder, extermination, enslavement, deportation, persecution, other inhumane acts, torture, unlawful human experimentation, rape and sexual violence, imprisonment, apartheid, and forced disappearance. The author concludes by examining the normative overlap between the three major international crimes: war crimes, CAH, and genocide. He stresses that it is important to note that CAH was first defined in the aftermath of the Nazi atrocities of World War II and was largely tailored to address such conduct. “Even the most modern definitions did not take into account that the majority of specific acts are either redundant or insufficiently defined, or have been incorporated into new conventions criminalizing them, as in the case of torture (p471).

In Chapter 7, the author thinks that necessarily changes gears in order to consider ratione personae and the theories and elements of criminal responsibility. He begins with the issue of international criminal responsibility of individuals. The first
subsection generally considers the doctrinal differences between international law and national criminal law related to individual, group, and state responsibility. The second subsection analyzes the responsibility for the conduct of another and group responsibility in the London Charter, the IMTFE, and CCL 10 (Control Council Law). The next subsection considers criminal responsibility and the “general part,” moving from a discussion of national legal standards and their relevance to international criminal law, to an evaluation of the problems in identifying the “general part” from the London Charter to the Rome statute, and finishing with a historical analysis of the application of the “general part” by the various tribunals. The author points out: to determine the degree of control to be exercised by the superior over the subordinate, the ICTY Appeals Chamber has endorsed the “effective control” standard, which is defined as the material ability to prevent or punish criminal conduct (p551). After a section considering the issue of knowledge of the law and intent, the author concludes by reviewing two important theories of liability, namely command responsibility and joint criminal responsibility (p580).

In Chapter 8, the author details the theoretical and jurisprudential histories of defenses and exonerations in the context of CAH, including obedience to superior orders, compulsion, reprisals, and *tu quoque*. He also considers the non-applicability of reprisals and *tu quoque* to CAH. Finally, the author ends with a section examining the immunity of heads of state (p648). In Chapter 9, the author discusses national prosecutions for CAH and CAH-type crimes. He begins with two sections devoted to individual criminal responsibility in pre- and post-World War I international prosecutions, as well as a third section concerning other evidence of international individual criminal responsibility during the same period. The next section surveys some of the post-World War II national prosecutions of CAH and CAH-type crimes, including the prosecutions in Israel, France, Italy, Canada, Austria, Germany, Spain, Argentina, Indonesia, and Iraq. The next section considers other recent developments in national prosecutions of CAH-type crimes, and in situations that potentially give rise to such prosecutions. The penultimate section confronts the historical issue of the selective enforcement of CAH (p723). In the last Chapter, the author provides his concluding assessment to discuss “The need for an international convention” (pp724-742).

According to Bassiouni, the term crimes against humanity (CAH) has come to mean anything atrocious committed on a large scale. This is not, however, the original meaning nor the technical one. The term originated in the 1907 Hague Convention preamble, which codified the customary law of armed conflict. This codification was based on existing State practices that derived from those values and principles deemed to constitute the “laws of humanity,” as reflected throughout history in

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different cultures. He continues to point out that CAH have existed in customary international law for over half a century and are also evidenced in prosecutions before some national courts. The most notable of these trials include those of Paul Touvier, Klaus Barbie, and Maurice Papon in France, and Imre Finta in Canada. But crimes against humanity are also deemed to be part of *jus cogens*—the highest standing in international legal norms. Thus, they constitute a non-derogable rule of international law. The implication of this standing is that they are subject to universal jurisdiction, meaning that all States can exercise their jurisdiction in prosecuting a perpetrator irrespective of where the crime was committed. It also means that all States have the duty to prosecute or extradite, that no person charged with that crime can claim the “political offense exception” to extradition, and that States have the duty to assist each other in securing evidence needed to prosecute. “But of greater importance is the fact that no perpetrator can claim the ‘defense of obedience to superior orders’ and that no statute of limitation contained in the laws of any State can apply. Lastly, no one is immune from prosecution for such crimes, even a head of State.”

Bassiouni’s book is extremely comprehensive, systematic and initiative, it “represents the latest valuable tome on the topic of crimes against humanity from a giant in the field of international criminal law and one of the ‘leading experts on crimes against humanity’”; and “…of all the books on CAH, this book is the first to include a world survey of national legislation and national prosecutions of CAH and CAH-type crimes that have occurred from the post-World War II era until the present. The book constitutes a unique and comprehensive treatment of all legal and historical aspects pertaining to CAH in a single definitive volume.” To sum up, Bassiouni’s book is all combinations of the theoretical and practical, the historical and current, the legal and moral, the political and economic, the national and international, and the cultural and multicultural.

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http://www.crimesofwar.org/a-z-guide/crimes-against-humanity/.