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Institutional Responsibility for Mass Atrocity Crimes with Thomas Pogge

Abstract: Humanitarian intervention and the Responsibility to Protect (R2P) are currently limited and encumbered by a pervasive absence of a political will. In states' calculations, political considerations are constantly winning-out over the moral considerations of saving at-risk segments of our planet. While institutional and legal reforms undoubtedly play a role in addressing this challenge, such reforms and structures have existed for generations now, and have largely failed to bridge this gap from 'moral necessity to political action.' What has been lacking is a moral understanding of humanitarian crises that is capable of reliably motivating the international community to undertake remedying actions, rather than merely expressions of concern. Such a moral foundation is achievable through institutional cosmopolitanism, an understanding of humanitarian intervention as satisfactions of our negative duties, and specifically the work of Thomas Pogge.

Keywords: *institutional responsibility, atrocity crimes, humanitarian intervention, Thomas Pogge*

Introduction (Humanitarian Intervention)

"Sometimes, a war saves people" –

Jose Ramos-Horta, First Foreign-Minister for an independent East-Timor

Humanitarian intervention is essentially a form of legal redress, based on a well-established collection of international law that exists to protect against mass atrocity crimes. These include: the Convention on Laws and Customs of War (Hague Conventions) (1899 and 1907), the Geneva Conventions (1864, 1906 and 1929), the United Nations Charter (1945), the Universal Declaration of Human Rights (1948), the Genocide Convention (1948), the Covenant on Civil and Political rights (1966), the covenant on Economic, Social and Cultural rights (1966), the Geneva Conventions (1949 and 1977), and the Conventions against Torture,

Cruel, Inhuman or Degrading Treatment or Punishment (1975 and 1984). The International Court of Justice, particularly the International Criminal Court, sit in arbitration over interstate disputes and individuals' crimes, respectively.

Beyond this, there is a tradition of reading the United Nations (UN) Charter as an "organic document" that can be parsed through the evolution of human rights law and universal jurisdiction; of understanding customary law as valid legal supplements (Heinze, 2009, p. 58), as was recognized in the *Paquete Habana Case* (1900) (Hehir, 2008, p. 23); and the normative strength of United Nations Security Council (UNSC) authorizations that build layer upon layer of legal structure that is capable of justifying humanitarian intervention given the right circumstances.

However, in the absence of an unequivocal "humanitarian exception" in the UN Charter (ICISS, 2001, p. 6.13), the failures of the international community to act decisively and with significant resolve in conflicts such as Somalia, Yugoslavia, Rwanda, East Timor, the Democratic Republic of Congo (DRC), Darfur and Uganda, tended to be explained away in terms of inadequate institutional and legal mechanisms – particularly the legally enshrined barrier of state sovereignty (Bellamy, 2006a, p. 199). Accordingly, the latest legalistic iteration protecting populations from mass atrocities and empowering humanitarian intervention, The Responsibility to Protect (R2P), was formulated with this 'humanitarian intervention vs. sovereignty' conflict in mind.

And championing the creation of R2P, Kofi Annan declared the coming defeat of state sovereignty: "when we read the Charter today, we are more than ever conscious that its aim is to protect individual human beings, not to protect those who abuse them" (Annan, 1999, pp. 49–50). While Gareth Evans, Chairman of the Committee that first drafted R2P into conception, stated that R2P would be the means to "bridge the sovereignty versus intervention divide" (Evans, 2006, p. 712). R2P was to be the most fundamental overhaul of the UN since its inception (Weiss, 2007, p. 112). Effectively, R2P made sovereignty contingent upon the protection of citizens, and placed an 'obligation' upon the international community to intervene if any state failed in this regard. Rather than a protection against outside states, sovereignty became a 'responsibility' (Orford, 2010, p. 336). R2P was adopted at the UN World Summit in 2005, it was reaffirmed six months later, in the United Nations General Assembly (UNGA), again in 2009, and finally in 2011.

However, practically, very little changed. Despite a few high-profile references concerning situations in places such as Kenya and Libya, the reality on the ground largely remained the same. Protective mandates remained lacking in Guinea (Bellamy, 2011, pp. 58–60, 88), Sri Lanka (Bellamy, 2011, pp. 60–62), Somalia (Bellamy, 2011, p. 89), the DRC (Bellamy, 2011, pp. 51–52, 89), and Zimbabwe (Garwood-Gowers, 2013, pp. 85–86). North Korea failed even to harness the attention of R2P advocates (Bellamy, 2011, pp. 67–68), and when R2P was explicitly referenced in the UNSC resolution authorizing a UN peacekeeping mission in Darfur, the required troops were not supplied by member states (Weiss, 2007, p. 55), and Sudanese refusals to approve the mission meant that it never materialized (Hehir, 2008, p. 67; Schulz, 2009, p. 150).

What the advocates of R2P missed was the nature of sovereignty as it existed in the international order. Sovereignty had never existed as a sacrosanct controlling concept (Weiss, 2007, pp. 12, 16). Rather it had always been limited in practice (Schrijver, 2000, pp. 69–70; ICISS, 2001, p. 1.35), and its violation was routine (Weiss, 2007, p. 13). Despite all of its surrounding hope and fan-fare, R2P, as adopted at the World Summit, was nothing more than a repetition of principles already accepted in international law and treaties (Hehir, 2012, p. 52).

R2P effectively imagined the extremely unlikely scenario of a world where states were morally itching to intervene in places such as Rwanda, Darfur or the DRC, but were holding themselves back due to legal barriers. The reality was much more obvious and much more depressing. Alex Bellamy explained: “the basic political fact [is] that no state wanted to pay the price associated with saving strangers” (Bellamy, 2011, p. 4); Ramesh Thakur described this reality as failures of “collective conscience” and “civic courage” (Thakur, 2006, p. 245); and Thomas Weiss saw it as “collective spinelessness” (Weiss, 2005, pp. 77–78). UN reports themselves explained the failures in Rwanda and Bosnia as failures of “political commitment” (Bellamy, 2011, p. 4) and “political will” (United Nations, 1999, para 499 & 502).

Indeed, commenting on the creation of R2P, Gareth Evans acknowledged that “without the exercise of political will, by the relevant policymakers at the relevant time, almost none of the things for which this book has argued will actually happen” (Evans, 2008, p. 119). Essentially, there exists a pervasive political desire to avoid accepting responsibility for mass atrocity crimes, hence there is an almost permanent global absence of political will for humanitarian intervention. And R2P, as it stood with its legalistic reimagining of state obligations, was never going to be able to address this. The creation of new international law was just not going to succeed where mountains of previous international laws had failed, and were routinely ignored.

As such, R2P simply did not have enough force to convince reticent states to engage in behavior that they were desperate to avoid. What was lacking was a moral understanding of humanitarian crises that could reliably motivate the international community to undertake remedying actions whenever, and wherever, they happen to occur. Such a moral foundation is achievable through an understanding of institutional cosmopolitanism that places the actions of humanitarian intervention as satisfactions of our negative duties, and specifically through the work of Thomas Pogge.

The False Hope of Moral Cosmopolitanism

“They understand me, as I understand them; and this understanding creates within me a sense of being somebody in the world.”

Isaiah Berlin

When mass atrocities occur, the appeal to moral cosmopolitanism always follows. Moral cosmopolitanism views ‘the individual’ as the definitive unit of moral concern. This is a “post-nationalist consciousness” (Ignatieff, 1993, p. 19) where the rights of states and nations can only be granted as valid if they are justified through the supreme moral authority of individuals (Hoffman, 1994, p. 29; Teson, 1988, p. 15). However, two key problems always tend to hinder this appeal. Firstly: be it through fear (Ignatieff, 1999, pp. 51–52), through what Freud coined as our “narcissism of minor difference” (Ignatieff, 1999, pp. 34–71), or simply due to normalization (Pogge, 2008, pp. 124–152), the territorial boundaries of states persist as an acceptable means of moral demarcation. And secondly: our moral concern simply tends to diminish as proximity increases. We all have a certain ‘moral myopia’ where our compassion decreases in proportion to how far the relevant suffering is removed from us, not just physically, but also in terms of identity (Greene, 2013; Bass, 2008, p. 20).

Accordingly, foreign citizens’ suffering tends to sit at the limits of our ethical reach – we are concerned, we wish it were not happening, but we also do not want to get involved. This is the challenge: if we do not intervene to remedy the distant suffering of others that we otherwise would if the suffering were more local, then we are allowing morality to be contingent upon ‘chance of birth’. The conceptual foundation of moral cosmopolitanism and the primary means of deconstruction, and challenge, to the norm of state/nation based moral divisibility is John Rawls’ thought experiment of the ‘original position’. This thought experiment requires that we step behind a ‘veil of ignorance’, and imagine a ‘just’ social order before knowing our place in that order. Everything about ourselves: race, sex, status, wealth, religion and country is unknown to us at the time of making this decision (Rawls, 1999).

Borrowing a phrase from Thomas Nagel, Michael Ignatieff sums this thinking up as the “view from nowhere”, as opposed to the “view from somewhere” (Ignatieff, 2011). We unavoidably exist in the world, and our interests are shaped by where that happens to be; this is the view from somewhere. To make all moral decisions from behind Rawls’ veil of ignorance, is to not know our place in the world, it is to take the view from nowhere. This is important, because moral truth, just as with scientific truth, must exist independent of ourselves for it to satisfy the category.

From this view from nowhere (the bedrock of moral cosmopolitanism), and faced with the next Darfur, Rwanda or Bosnian scale humanitarian crisis, it becomes inconceivable not to demand immediate and decisive humanitarian intervention, knowing that we might very well be one of the unfortunate citizens of such regions – not knowing where we might fall in the “global lottery” (Ignatieff, 2011). This is a reach of compassion that is best explained

through the intuition pump (Dennett, 2013), of ‘Peter Singer’s Pond’. In this analogy Singer asks us to imagine a scenario where an infant child falls into a knee-deep pond and is drowning in the water. We can easily wade into the muddy water to save her, however the water will damage our clothes beyond repair. When weighing the girl’s life against the minor cost of replacing our clothes, no-one of good conscience could conceivably choose the latter (Singer, 2009). This is a moral standard that Kwame Appiah explains as: “If you can prevent something bad from happening at the cost of something less bad, you ought to do it” (Appiah, 2006, p. 160).

Peter Singer’s Pond is used to show that this logical obligation to help the drowning child is a standard that can, and ought to be, extended to compel us all to donate money to save at-risk lives around the world. If, when confronted by human suffering, we are, on the whole, naturally motivated to assist however we can, and in spite of the personal sacrifice that such an action entails, then there are no logical grounds for avoiding such assistance when the suffering in question is foreign and beyond our line of sight (Singer, 2009; Singer, 1972).

As convincing as this analogy is, it develops an even greater motivational pull when it is approached via the ‘view from nowhere’/‘veil of ignorance’. Walking by the same pond, we once again notice ‘someone’ is drowning, however, their identity cannot be known. They could be a stranger, just as they were previously, or they could just as easily be our friend, our relative, our spouse, or our own child. Under such circumstances, the moral compulsion to assist becomes overwhelming. So, by shifting the analogy, and imagining the ‘life in danger’ to be the result of mass atrocity crimes, rather than Singer’s allegorical pond, then the moral force behind humanitarian intervention and R2P becomes an unavoidable obligation.

This is moral cosmopolitanism. The trouble is, it doesn’t work, at least not consistently. The ‘view from nowhere’/‘veil of ignorance’ is something that exists counterfactually to our lived experience, and therefore is just too hard to inculcate into our moral lives; it can only really be appreciated as theory, and hence is too easily dismissed. Singer’s Pond, though easily understood, and logically consistent, just has not worked. Everyday people have simply not flocked to help those suffering abroad by virtue of having read Singer’s argument. Despite understanding the obligation upon them, people are still finding a way to avoid it. A more compelling, and emotively unavoidable, moral force is required.

Thomas Pogge & Negative Duties

“Failing to save lives is not morally on a par with killing.”

Thomas Pogge

If humanitarian intervention and R2P are conceptualized through the logic of moral cosmopolitanism, the political will for action to address mass atrocities ought to, logically, increase; a greater ‘compliance pull’ should develop. However, moral cosmopolitanism suffers from libertarian objections (Pogge 2005: 68), and is just too easily avoided as a type of ‘optional

charity', rather than as a binding obligation. The barrier is simple: while reason is what defines moral truth, emotion is what defines moral acceptance. And even the best reasoned moral principle is meaningless in practical terms if it remains unaccepted by most people. To address this challenge (though focusing primarily on global poverty), cosmopolitan philosopher, Thomas Pogge, formulated a 'minimal standard of global justice'; something so fundamental and agreeable, that universal compliance would be unavoidable.

For Pogge, this was a simple claim that global justice requires nothing more than a commitment that we do not inflict harm upon others – that is, that we do not violate our negative duties not to harm, in relation to basic human rights standards (Pogge, 2008, p. 15). Human rights and duties interact in two distinct ways: firstly, that the human right in question directly imposes a duty, insofar as any violation of that duty necessarily involves a violation of the right. And secondly, a duty is inferred from a credible understanding of the right; that is, indirectly (Pogge, 2005, p. 66). Pogge's minimal standard of global justice involves the following simple logic regarding these duties as emanating from rights. If human right 'X' exists, then the moral statement that 'we all have an attached duty to ensure that all people have 'X' is true (positive duties), but it viscerally holds less force than the statement that 'we all have a duty not to deny other people access to 'X' by virtue of our actions (negative duties). Quite clearly, negative duties deliver greater 'compliance pull' than positive duties (Pogge, 2005, p. 69).

Rather than focusing on our positive duties to come to the aid of people in need, Pogge focusses on ensuring that we do not act in a way that causes people to need such aid in the first place (Pogge, 2005, p. 67; Pogge, 2008, p. 25); this is a duty not to harm, as opposed to a duty of assistance (Pogge, 2010, p. 32). Expressed by Pogge: "Failing to save lives is not morally on a par with killing" (Pogge, 2008, p. 14). Or, to return briefly to Peter Singer's Pond, there is a moral difference between not assisting a drowning child (a violation of our positive duties), and dragging a child into the pond and holding her head under the water until she drowns (a violation of our negative duties).

Commonly understood as a positive duty (Holt & Berkman, 2006, pp. 32–33), if humanitarian intervention and R2P could be reconceptualized as satisfactions of our negative duties not to harm others, then it is likely that they will attract much more political will into the future. That is, if it can be shown that the international community, or certain international actors, are causally responsible for mass atrocities being perpetrated elsewhere in the world (in violation of a negative duty), then that necessarily demands that states intervene to halt the violence as a form of remedy (assuming that diplomatic options are unavailable) (Miller, 2007, p. 100). A moral statement for humanitarian intervention and R2P reads: 'whoever causes mass atrocities to occur, is thereby obligated to intervene in order to stop them'.

In order to judge violations of our negative duties, Pogge proposes two methodological categories: 'interactional harm' and 'institutional harm'. Interactional harm is when individuals within a social environment create a harmful social reality; that is, harm caused by direct actions. Institutional harm – and what Pogge is primarily focused upon – is harm that is

caused by institutions and culture; that is, the coercive structure that is implemented and/or maintained within the social reality (Pogge, 2010, p. 15).

Profiting (Interactional Harm)

“Civil conflicts are fueled by arms and monetary transfers.”

International Commission on Intervention and State Sovereignty

Profiting behavior that correlates directly to a harmful outcome for others, thereby being a violation of our negative duties, tends to get hung-up on, and obscured by, a single barrier: the degree of profit compared to the harm caused. There is often the claim that any profiting behavior in the scheme of a civil war or conflict, is but minor extra harm being added to broader violence, hence compensation (intervention) is not owed. Just how much harm is caused by a single behavior is, almost by definition, unquantifiable. This standard obfuscation profoundly misunderstands the nature of moral responsibility. Compensation is not owed as a proportion of the harm caused or the profit received, but rather it is owed in relation to the entire injustice/conflict/harm that the profiting behavior contributed to. To better explain this, an intuition pump created by Thomas Pogge is helpful.

Imagine that you organize a beach party with four of your friends. By the end of the night a personal profit of \$600 is made by each of you as an equal fifth of the total profit – \$3000. However, in the course of events your party activities have inadvertently caused damage to the local community’s fishing boat, their primary income source. The damage bill is \$1000, and considering that all five of you have hosted the event that caused the damage, and have subsequently profited from the event, it might be expected that each of you pays \$200 from your respective \$600 share of the profit.

However, if you accept this logic and pay your share, but the other four balks at the costs and refuse to pay theirs, your moral responsibility cannot be considered to be absolved; the local community are still dealing with an \$800 loss, and are suffering from a loss of livelihood, as a result of your actions and your violation of your negative duties not to harm. To claim that your moral responsibility is limited to the degree of profit you made, and as a proportion of the company you kept, is to ignore the impact of the profit-making behavior. After all, if all five of you were to have murdered someone that night and the punishment for murder was 25 years in prison, the court would not consider you to be only one-fifth of a murderer and therefore only punishable by 5 years in prison. Rather you are all murderers in your own right and each responsible for the entirety of the human rights deficit that you have caused, namely the loss of the individual’s life.

So, in the event that your friends refuse to pay their share, then you are responsible for the entire harm caused, the entire \$1000. We are entirely responsible for the harm and human rights deficits that we contribute to, not just for our proportioned share of the harm/human rights deficit (Pogge, 2005, p. 74). So, keeping this framework in mind, there are

numerous ways in which our profiting behavior might end up violating our negative duties in relation to mass atrocities. Categories of ‘passive profit’ (Pogge, 2005, p. 72) include, but are not limited to:

1. By producing relative deprivation and extreme inequality (Sandler, 1997, p. 185; Milanovic, 2007, p. 30; Ping, 2011, pp. 86–88);
2. Situations that have well-proven causative links to civil wars (Shah, 2010);
3. Situations that have proven causative links to producing ethnic tension and state weakness (Weiss, 2007, pp. 61–62; ICISS, 2001, p. 3.19; Bellamy, 2011, pp. 94–99);
4. By contributing to ‘structural violence’ (Galtung, 1969);
5. By contributing to ‘frustration-aggression’ theories of violence (Jacoby, 2008, pp. 103–123).

The above incomplete list constitutes behaviors that contribute to the rise of violence and mass atrocities by creating unique social environments that are prone to such crimes (Pogge, 2005, p. 70). Such social environments existed in the conflict zones of Sri Lanka (Goodhand, 2001, pp. 26–27), Rwanda (Weiss & Collins, 2000, p. 100), Bangladesh (Bellamy, 2011, p. 98), Kosovo (Renner, 1999), Sierra Leone (Bellamy, 2011, p. 107) (Goodhand, 2001, p. 26) and Somalia (Abdi Elmi & Barise, 2006).

However, a more intuitive example of profit-to-harm causality comes from the category of ‘active profiting’. And of this category, nothing articulates this better than the global arms trade. The increase of arms into conflicted and fragmented societies has been shown to have a significant escalating effect on the likelihood that the society in question will suffer from civil war, government oppression and mass atrocities (Pogge, 2005, pp. 64–65). Accordingly, any country that supplies large scale arms exports into unstable social orders, ought to be considered as violating their negative duties not to harm.

Over \$167 billions of arms were sold into fragile, developing societies in the period from 1996 to 2003 (Pogge, 2005, p. 64). A large proportion of which were sold directly to openly oppressive governments, thereby providing them an opportunity to sustain and increase the degree of subjugation and brutality that they were inflicting upon their populations (Pogge, 2008, p. 29; Pogge, 2005, p. 64; Keller & Nolan, 1997–1998).

Indeed, much of the world’s post-Cold War conflict zones cannot be properly understood outside the context of a global environment that came to be characterized by free trade and high competition among sellers in association to a global market for arms (Keller & Nolan, 1997–1998). Between 1999 and 2003 the Democratic Republic of Congo (DRC) purchased \$218 million worth of international arms, Sudan purchased \$239 million, Sri Lanka \$423 million, Myanmar \$478 million, Colombia \$490 million and Turkey \$3.497 billion; a period where all mentioned states were being accused of perpetrating grave human rights abuses against its citizens (Yanik, 2006).

The conflict in Bosnia, in both intensity and longevity, would not have been possible if it weren’t for arms imports from the Soviet Union amounting to billions of dollars; a situation

that was intensified by a flood of small arms that was sold into the region by the broader international community post-1989 (Goose & Smyth, 1994; Gelb, 1976–1977). Similarly, the Reagan administration in America continued selling military hardware to Iraq during the Iran-Iraq War, despite being fully aware that the materials in question were being used to militarize chemical weapon stores. The use of these chemical weapons upon Iranian forces, then later upon Iraqi-Kurds, constituted war crimes and crimes against humanity, respectively (Kessler, 2013).

As Turkey grew into the largest single market for American military hardware, so grew their suppression of the Kurdish minority within the country. The imports peaked in 1994. The same year coincided with a precipitous climb in the ethnic cleansing of Kurdish provinces (Chomsky, 2012, pp. 11–12). In Somalia, after General Mohammed Said Barre imposed the authoritarian rule, the country became increasingly fragmented, governed by warlords, and rife with human suffering (Weiss & Collins, 2000, p. 81) (Abdi Elmi & Barise, 2006). This increasing collapse of fundamental human rights and the state itself, came at the same time as Somalia was witness to increased militarization of its society through “four waves” of arms imports (Weiss & Collins, 2000, p. 81).

In 1993, during the steady, and well-noted build-up to the Rwandan genocide, an international bidding war was underway as countries (particularly Egypt, South Africa, Russia and France) competed for the right to supply arms to the Rwandan government (Goose & Smyth, 1994). In the case of France, they continued to funnel weapons into the country as late as 1994, in strict violation of UN-imposed arms embargoes (McNulty, 2000). And to compound matters, the Rwandan military were later resupplied with arms – thereby helping them to disperse, prolong and intensify the conflict – by South Africa, China, the Seychelles, Zaire (DRC) and France as late as 1995 (Weiss & Collins, 2000, p. 101).

The ongoing conflict in Africa’s horn can be significantly explained by an internationally facilitated arms race (Ignatieff, 1999, p. 16). Indeed, the period from 2001 to 2006 which saw unprecedented escalations in the civil conflict and mass atrocities, was the same time that Chinese light arm sales into Sudanese society increase by 137 times its original level (Kelly, 2011). Whilst the 1975 invasion of East Timor by Indonesia, along with the war crimes and ethnic cleansing that followed, was directly facilitated by international arms sales, despite the presence of arms embargoes. These illicit arms sales persisted all the way up to 1999, when the violence and mass atrocities resumed (Chomsky, 2012, pp. 21–63; Sidell, 1981).

State Behavior (Interactional Harm)

“Huge sections of the world’s population have won the ‘right to self-determination’ on the cruelest possible terms: they have been simply left to fend for themselves.”

Michael Ignatieff

There often can be a tenuous and overreaching component involved in trying to understand manifestations of mass atrocities as caused by third party strategic state behavior. Yet in spite of this tendency, certain aspects of state behavior: specifically, power relations, strategic alliances and the single-minded pursuit of self-interest can be considerably more transparent in their links to the formation of mass atrocities (Pogge, 2008, p. 29). For example, statistics show that mass atrocity violence almost universally occurs within the context of political instability, such as forcible regime change, civil war, reversals in democracy, state collapse and loss of central authority (Ulfelder, 2012). Such situations and harm, as caused by third party state behavior, are best conceptualized through the distinct historical phases of ‘Colonialism,’ ‘Cold War imperialism,’ and the ‘post-Cold War period.’

Colonialism:

The impact of colonial legacies, even those now centuries-old, have, in some instances, left lasting stains on the fabric of now independent nation-states, through their culture, institutions and material reserves. It is often particularly prevalent in Africa where many countries’ economic and political weakness is easily traceable to their colonial histories. Almost universally, wide-scale, and expanding conflict zones, marked the colonial period. And in the wake of such violent expansion there tended to be dangerous combinations of increased stocks of advanced weaponry, power vacuums, weak government institutions, institutionalized discrimination, entrenched divisions of labor, depleted resource reserves, the creation of arbitrary state borders, and a new presence of unequal and oppositional ethnic hierarchies.

Perhaps predictably, this unfortunate amalgamation of factors naturalized these societies toward societal suppression, despotic rule, ethnic mobilization and the use of violence as the standard means of political change. An extensive study of the colonial heritage of 160 countries supported this reality, explaining in detail that “inter-communal violence is a common legacy of colonialism” (Lange & Dawson, 2009).

Before the colonization of Rwanda, the three main ethnic groups, Hutu, Tutsi and Twa were living side-by-side under a single king, intermarriage was common and the three groups were culturally and linguistically homogenized. Belgian authorities’ decision to facilitate its colonization through the creation of a “Tutsi aristocracy”, fused new ethnic divisions with both privilege and deprivation. This division became so entrenched with the culture and

institutions of Rwandan society, and had strained ethnic tensions to such an extent, that when genocidal violence erupted generations later, the minimal provocation was required (Tan, 2013, p. 160; Lumumba-Kasongo, 2005).

In Sri Lanka during colonization by the British, the Tamil minority was positioned as a favored ethnic class; an imposed privilege that resulted in Tamils unnaturally dominating elite positions in government and holding disproportionately large sections of the country's wealth. Upon decolonization, this imposed ethnic hierarchy had driven such an ethnic divide between Tamils and Sinhalese, that civil war was fairly inevitable, along with the accompanying war crimes and crimes against humanity.

Through various waves of colonialism in the Congo, the country was effectively hollowed-out of wealth and resources by creating extractive political and economic institutions. Cycles of subsistence living, abject poverty and ethnic/political violence persist today (Oder, 2011; Wanki, 2011). Similarly, the deployment of 'divide and rule politics' by Britain during the colonization of Sudan, imposed a north-south religious segregation, and enflamed ethnic divisions, particularly so in light of a disproportionate level of development allocated to Northern Sudan. Upon decolonization Sudan quickly became engulfed by civil war and mass atrocities, as ethnic violence filled the power vacuum left behind.

Cold War Imperialism:

During the Cold War, the efforts of imperialism often manifested in terms of assistance and support of either rebel forces or oppressive governments in the hopes of destabilizing ideological foes, implanting global allies and securing strategic power centers. The horn of Africa was particularly affected by Cold War imperialism due to its strategic proximity to the Persian Gulf, the Red Sea and the Suez Canal, with the Soviet Union and the US investing heavily in securing strategic support. The Soviet Union deployed large scale influence and aid into oppressive regimes in Ethiopia and Somalia, with the US similarly countering this behavior in Kenya and Sudan (Creative Associates International).

Somalia, in particular, suffered during this Cold War imperialist-era as the United States and the Soviet Union competed for the support and favor of General Mohamed Siad Barre. The money and the military material that flooded the country allowed Barre to maintain and strengthen his brutal dictatorship by force, whilst conversely weakening civil society, country-wide development and social cohesion to the point of becoming the world's quintessential 'failed state' (Abdi Elmi & Barise, 2006) (Weiss & Collins, 2000, pp. 81–85).

During the Cold War period alone, the United States supplied \$1.5 billion in arms to secure allies across Africa, which left a lingering impact in terms of cycles of destitution, violence and weak or unrepresentative governments, particularly so in Liberia, Somalia, Sudan and the Democratic Republic of Congo (DRC). In Zaire (DRC), the US directly supported the Mobutu Sese Soko dictatorship with a combined US\$400 million in military training and arms. The DRC was left so socially fractured and structured around extractive institutions

(both political and economic) by the Mobutu regime that the country has not managed to escape from a permanent state of civil conflict since; a social environment where the seizure, control and theft of natural resources often remain as the only avenue for escaping the abject poverty that pervades the country (Hartung & Moix, 2001 Satz, 2005, p. 49).

To make matters worse, after the collapse of the Soviet Union, with the need of Cold War alliances disappearing, many of these countries, now heavily armed and/or governed by dictatorship, were simply abandoned by their once-powerful benefactors and left to fend for themselves in the absence of the funding and assistance that they had long relied upon. National armies suddenly unable to support their inflated size, splintered into militias, insurgent groups and armed gangs, resulting in permanent 'state weakness' and cycles of violence and mass atrocities (Renner, 1999).

Post-Cold War:

One of the more egregious examples of strategic state behavior constituting a violation of negative duties in the post-Cold War period has been Chinese support for the Sudanese government. After American oil companies withdrew from Sudan in the wake of international economic sanctions being imposed upon the country's government after claims of ethnic cleansing came to light, China took advantage of the gap in the market left by these sanctions. In collusion with the Khartoum government, they began supplying the infrastructure needed to exploit the Southern oil reserves that were being seized by virtue of the ethnic cleansing.

Particularly egregious was the behavior of the state-owned Chinese National Petroleum Corporation (CNPC), which after a \$5 billion government investment, secured Chinese access to 82% of Sudanese oil production (part of this support involved the supply of an interest-free \$13 million loan to build a new presidential palace in a country suffering from economic underdevelopment and malnutrition). CNPC then closely tracked the frontline advances of troops as they terrorized families from their homes.

That facilitated the immediate purchase and development of newly seized oil fields. This predatory behavior went as far as allowing the Sudanese military and paramilitary forces to operate directly out of CNPC oil developments, using these installations as launching pads for fresh military offensives and mass atrocities. Combined with a series of strikingly similar unethical investments across Sudan's southern border in the Central African Republic (CAR) (Shinn, 2009), China helped the Sudanese government "engineer genocide" in Darfur by providing the material support needed in the wake of international sanctions (Kelly, 2011).

Institutional Incentives (Institutional Harm)

“The reality is that the mass slaughter of civilians usually occurs in the context of civil war, where it is employed as a tactic by both sides.”

Alan Kuperman

Statistically, democracy operates as a bulwark against mass atrocity crimes. Such crimes and the related human suffering are considerably more likely to occur under authoritarian governments (Bellamy, 2011, p. 108) or in situations of reduced, or absence of, political representation (Pogge, 2010, p. 41). Beyond this, a society’s susceptibility to internal conflict is dramatically increased by the presence of repressive or authoritarian regimes (Bellamy, 2011, p. 97), the type of conflicts under which the “mass slaughter of civilians” is likely to happen (Kuperman, 2001, p. 116; Weiss, 2007, p. 62).

Thomas Pogge targets five key ‘privileges’ – the ‘resource privilege,’ ‘borrowing privilege,’ ‘treaty privilege,’ ‘banking privilege’ and ‘international bribery’ – as institutional aspects of the international order that incentivize both authoritarian government and predatory takeovers, such as coups or civil wars.

The ‘resource privilege’ allows a country’s resources to be the legitimate property of that country’s government, regardless of how they come to power, or how they choose to govern. It effectively offers national resources as the spoils of war by treating *de facto* rulers as the rightful sellers of those resources (Collier et al., 2003, p. 58). That, in turn, incentivizes autocratic and even violently suppressive rule in order to hold on to control of national resources and the wealth it provides (Pogge, 2005, p. 72).

The UN Secretary General’s report to the General Assembly and the Security Council (1998) on conflict and sustainable peace and the ‘resource curse,’ stated that a significant barrier to peace was the “exploitation of natural resources” (United Nations 2006). The pull-factor of the resource privilege is so marked, that the survival rate of any democratic government decreased half a percentage point in correlation with every percentage increase in the size of the country’s resource base (Pogge, 2010, p. 48). In 2005, a causal link between the inflow of arms to a society and the exploitation of natural resources was recognized by the United Nations Security Council (UNSC) (United Nations, 2006), while statistics show that any country whose economy is more than 25% reliant upon natural resource extraction, is five times more likely to suffer from internal conflict (Goodhand, 2001, pp. 26–27).

The logical challenge to this aspect of the international order, is the analogy of a local warehouse that is overrun by a group of armed criminals. Knowingly purchasing the stolen merchandise from this warehouse would constitute a criminal offense and you would have no legal ownership over purchased goods. If this is the legal and moral standard at a domestic level, then there ought to be no such limitations at the international level (Pogge, 2010, p. 47).

In a similar way to the resource privilege, the ‘borrowing privilege’ offers an incentive toward authoritarian or repressive government, and also toward coups or violent uprisings. It does this by affording anyone who governs a country, regardless of how they come to power, or how they hold power, the right to take on international debt in the country’s name. These debt burdens are the country’s responsibility to repay, not the individuals that seek them, and there are no inherent requirements that such debts are undertaken for the benefit of the nation as a whole. So naturally this tends to become an avenue for personal enrichment and as a means by which internal security structures are implemented to perpetuate despotic rule. Yet despite these loans not being applied toward the country in questions benefit, future governments and populations are still held responsible for the repayment of the debt – and the international legal order is heavily weighted toward creditor nations (Pogge, 1989, pp. 266–267).

Beyond incentivizing immediate violence and mass atrocity crimes as a means to secure control of this borrowing privilege, the long-term impact of these debt burdens and the structural challenges they represent, limits domestic spending (Stiglitz, 2007, p. 212), imperils future growth rates (Oatley, 2010, pp. 191–192), increases social fragmentation and deepens cycles of deprivation and poverty, in turn making those societies more susceptible to cycles of violence and mass atrocities (Pogge, 2010, pp. 49–65). For example, the International Monetary Fund (IMF) and the World Bank supplied the autocratic leader of Zaire (Democratic Republic of Congo), Mobutu Sese Seko, with nine separate loans during his term in office despite knowing that he was personally appropriating large percentages of the money (Satz, 2005, p. 49). Meanwhile, the Rwandan state is still being held responsible by international creditors for repaying a series of loans that were undertaken by the Habyarimana government to arm and mobilize sections of the society for the looming genocide (Pogge, 2010, p. 173).

In much the same vein, the ‘treaty privilege’ allows future generations to become burdened by the weight and the obligations inherent within the long-term binding treaties that are signed by previous *de facto* governments (Pogge, 2010, p. 49). For example, WTO membership was signed for Burma by the State Law and Order Restorative Council (SLORC) junta, for Zaire (DRC) by Mobutu Sese Seko, Zimbabwe by Robert Mugabe, and Nigeria by Sani Abacha (Pogge, 2008, p. 29).

The ‘banking privilege’ incentivizes coups and violent seizures of power, along with repressive rule once that power has been acquired, by allowing for regime elites to embezzle public funds into international bank accounts. To employ Guinea as an egregious example, oil revenues passing directly to overseas bank accounts and regime elites allowed the president’s eldest son to, amongst other things, purchase a \$30 million mansion in California, and a \$180 million mansion in Paris (South African Foreign Policy Initiative: July 18, 2013). The total cost of such illicit transfers of funds from developing countries into developed countries is likely to be over \$1 trillion per annum (Pogge, 2010, p. 36).

As a similar incentivizing mechanism, the relative legitimacy of international bribery rewards the simple fact of achieving power, by offering international influence, favor and

material gain to those who seize and hold power, regardless of the means. Right up until 1999 and the introduction of OECD legislation, firms were not only generally authorized by their home governments to bribe foreign officials, but such bribes also tended to be tax-deductible (Pogge, 2008, p. 29; Pogge, 2010, pp. 45–46).

Thomas Pogge's Institutional Cosmopolitanism (Institutional Harm)

"The Security Council has repeatedly privileged the non-interference rights of states over the rights of individuals not to be arbitrarily killed."

Alex Bellamy

For any given mass atrocity there invariably exists a vast, and often interconnected, series of actors, behaviors and intentions that all contribute in some degree to the violence and suffering. The complexity of such factors and their causative impact, present countless avenues for obfuscation and self-denial when it comes to accepting moral responsibility for the crimes in question. And as a result, the political will for remedying action is often also absent. Doubts, either real or imagined, about whether specific arms sales, state behavior or institutional incentives actually had any tangible impact upon a specific mass atrocity are largely impossible to disprove. Just as it is largely impossible to accurately designate a percentage of responsibility that a specific arms sale, state behavior or institutional incentive should own for a specific mass atrocity. This opacity of moral responsibility, if only on the margins, is often the barrier to real action and change.

That is why Thomas Pogge's institutional cosmopolitanism is such an important moral tool in addressing mass atrocity crimes. By focusing upon the institutional means by which global citizens can be held in violation of their negative duties not to harm, Pogge develops a theory of global justice that incorporates the previous category of 'Institutional Incentives', along with the interactional categories of 'Profiting' and 'State Behavior', through an understanding of the cultures, structures and mechanisms that allow such direct relational harm (Pogge, 2009, p. 17). The outcome is a theory of justice and an understanding of mass atrocity crimes that go beyond the game of singling out specific actors, and rather placing responsibility for the atrocities upon the collective majority of humanity.

The focus of moral cosmopolitanism is the 'global institutional order'. It is an extremely complex matrix of design decisions (Pogge, 2008, p. 18); specifically "laws and conventions, practices and social institutions" (Pogge, 2010, p. 15) that standardize interactions and produce outcomes; all that shapes the world in regard to human interaction; the structural features of the global social reality (Pogge, 1989, p. 22).

The standard by which Pogge judges this social reality is with the Universal Declaration of Human Rights as what he considers the minimal condition of basic human rights: "everyone is entitled to a social and international order in which the rights and freedoms outlined in this Declaration can be fully realized" (Pogge, 2010, p. 30). It is the 'baseline'

standard. A standard that is prudently chosen due to its minimally impositional nature; something capable of appeasing most libertarian concerns, whilst still functioning as an acceptable notion of justice (Pogge, 2005; Pogge, 2008, p. 16).

From this baseline standard, Pogge grows his theory of what is institutionally unjust from whether the global institutional order imposes human rights deficits on any section of the world in a manner that is both ‘foreseeable’ and ‘avoidable’ (Pogge, 2005, p. 61). These two categories are vitally important because it would be impossible to assign liability for any human rights deficit reasonably without them. And importantly for Pogge, the avoidable and foreseeable human rights deficits of the global order ought to be judged not in relation to how things are, or have been, but rather in comparison with a ‘counterfactual’, possible reality that is void of human rights violations. For Pogge, an “institutional order harms people when its design can be shown to be unjust by reference to a feasible alternative design” (Pogge, 2008, p. 25).

The core challenges to Pogge’s claim that the above hypothetical order can be considered to be causing harm are. Firstly: It downplays, or even ignores, the role played by domestic circumstances and domestic actors (Slaughter, 2009). It is just a broad misunderstanding of Thomas Pogge’s theory of justice that is brought about by his ‘quarantined’ focus (Pogge, 2008, p. 17) on global factors. Pogge recognizes the role of such domestic factors, and sees them as causally important in the formation of injustice, but does so as part of a “symmetrical responsibility” with the global order. Pogge is simply trying to break the false logic that most people tend to buy into, that is, the further causally removed from an injustice that an actor stands, the less responsible they are (Pogge, 2005, pp. 63–64).

Secondly: The global institutional order cannot be considered to be causing harm because rates of violent human suffering are declining (Pinker, 2011), and therefore the global order ought to be praised for improving the conditions of the global society in relation to mass atrocities. This is, however, a failure to keep sight of the correct baseline. These claims ignore Pogge’s minimal human rights standard and focus instead on a historical baseline. The decline of manifestations of mass atrocities within the global institutional order, offers no conceivable form of justice to the populations that are still suffering from such foreseeable and avoidable human rights deficits. As explained by Pogge, a “man is not benefiting the members of his family if he beats them up less often than he used to” (Pogge, 2008, p. 23).

So, on Pogge’s criteria, if it can be shown that the global institutional order, from a counterfactual human rights baseline, produces foreseeable and avoidable human rights deficits in the form of mass atrocities, then we can all, as global citizens, be considered to violate our negative duties not to harm. The ‘foreseeable’ category of this equation is easily satisfied by a simple reference to history. Mass atrocity crimes are currently being executed at the time of writing this, just as they have regularly emerged throughout recent history, and beyond. The repetitious, and regular emergence of mass atrocities of significant scale and in non-anomalous quantities, is enough to constitute their general foreseeability. Mass

atrocities exist today as permanent features of the global order (Pogge, 2008, pp. 6–16; Pogge, 2005, p. 55).

The ‘avoidability’ category of such mass atrocity crimes is often considered more controversial, but in light of the counterfactual possibilities, and the nature of the human rights deficits that result from such crimes, it ought not to be; it is, rather, irrefutable that mass atrocities can be avoided. The challenges to this tend to come in the form of psychological barriers. Firstly, the problem’s historical strength tends to convince many people that there is an inherent intractability. We tend to consider repetitious elements of our social order as indelible (Pogge, 2005, p. 56). It is a parochial misconception, and an absolute failure to acknowledge what has also been a permanent aspect of the global order in recent history: progress. Secondly, the very scope of the problem tends to make its correction appear beyond our control. It just seems insoluble by virtue of its size and constancy. It is a failure to keep sight of Pogge’s baseline standard that makes mass atrocity crimes such a blight on our consciences – the human rights violations. As such, even if a solution would not be immediate, or absolute, or might even fail outright, we are still obliged to attempt, for even if only a small percentage of the overall human rights deficit is eased, it would mean absolutely everything, the difference between life and death, to those people who are helped (Pogge, 2008, pp. 7–9). It is just not credible that mass atrocities, as they exist today, cannot be considered avoidable by some counterfactual variant of human rights instruments, international law, enforcement mechanisms, economic improvements, etc. It is an uncontroversial aspect of science, that anything not limited by the laws of nature is achievable (Deutsch, 2011). Mass atrocities are a soluble problem.

Any understanding of the global institutional order that produces foreseeable and avoidable mass atrocities, does not just represent an injustice, or a human rights deficit, but also a violation of our negative duties not to harm; that is, by virtue of our contribution to the maintenance, imposition and design of that social order. Lack of transparency in, or the sheer convolution of, the decision-making process at the international institutional level cannot absolve ourselves of the blame for its outcomes. The people with real hands-on access to the creation of our social order are the representatives of countries, and can only hold those roles and make the decisions they do, with the support, be it tacit or otherwise, of their domestic citizenry. Their actions are also ours, and the global institutional order is what we make it to be (Pogge, 2005, p. 79; Pogge, 1989, pp. 222). Only an exceptionally tiny sub-section of humanity can ever consider themselves to be detached from global institutional structures in all manners of interaction (Pogge, 2009, p. 17).

Accordingly, the absolute vast majority of global citizens, as near 100% as imaginably possible, are active in an institutional order – be it through the design, the maintenance, by participating in, or by the cooperation with, that order – that predictably produces mass atrocities (Pogge, 2009, p. 17), thereby violating our negative duties not to harm. For Pogge this is similar complicity to that of passive Germans during the Nazi period, or of non-supportive Americans during southern slavery. The individuals in these cases, no doubt

disliked the institutional order they lived in, hated the harm and human rights deficits that those institutional orders were causing, thought of themselves as morally upstanding people, and did not participate in the owning of slaves, or the holocaust, personally. However, also in each case, those same individuals paid taxation, purchased discounted goods, and contributed their labor, amongst other things, to the upkeep and maintenance of those institutional orders (Pogge, 2002, p. 66). In this same way, we ought to consider ourselves complicit in the harm caused by our institutional order in the form of mass atrocities, despite our passivity or dislike of the system and its outcomes – we are “accomplices in a monumental crime against humanity” (Pogge, 2008, p. 31).

The final point to mention is what Pogge considers to be the logical implication of this realization. That is, what this understanding of justice demands of us all: compensation and reform. Firstly, we are required to compensate, however possible, for the harm that we are imposing through an unjust global institutional order. For example, this would change the moral understanding of humanitarian, now R2P, interventions. Such interventions, along with other conceivable harm-relieving measures, should now be viewed as unavoidable ‘obligations’ under a scheme of owed compensation for violations of our negative duties not to harm. The final step in this process is reform: we are required to address and alter the global institutional order to try and ensure that human rights deficits in the form of mass atrocities are no longer foreseeable and avoidable aspects of that global order (Pogge, 2008, p. 26).

Conclusion

“Maybe, just maybe, we’ll be able to say ‘never again’ in the future without having to periodically look back, as has so often been the case in the past, asking ourselves, with a mixture of anger, incomprehension and shame, how did it happen again.”

Gareth Evans summing up the optimistic atmosphere that surrounded R2P

Through the ‘interactive’ categories, of ‘profit’ and ‘state behavior’, and the ‘institutional’ categories of ‘incentivizing violence’ and particularly the expansive and inclusive theory of justice that is Thomas Pogge’s ‘institutional cosmopolitanism’, it is possible to overcome the lack of political will to action that has so far plagued humanitarian intervention and the Responsibility to Protect (R2P). This is a barrier that moral cosmopolitanism, as understood to be a positive duty to assist others in need, has failed to address. It can be reasonably argued that understanding mass atrocity crimes as violations of negative duties not to harm will produce increased compliance pull.

This is a brief, and incomplete – yet broad enough still to encompass the vast majority of the world’s citizens – account of institutional responsibility for mass atrocities. Perhaps

for the next ‘Rwanda’, the world will not debate whether or not to help, while many others weigh the politics of the action, but rather accept that the crimes before us are our causing, if only in part, yet that part itself makes us responsible for the whole. It is not an attempt to blame only the powerful, or to excuse individuals of their crimes. It is merely an attempt to show a new moral future, and a pathway to achieve determinacy from international actors when faced with mass atrocity crimes.

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