THE HOLOCAUST AND MASS ATROCITY: THE CONTINUING CHALLENGE FOR DECISION

Winston P. Nagan[*]   Aitza M. Haddad[†]

[*]UF, Levin College of law, nagan@law.ufl.edu
[†]UF, Levin College of Law, amhaddad@ufl.edu

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Abstract

This article begins with an appraisal of a report published by the United States Institute for Peace and authored by the former Secretary of State, Albright, and former Secretary of Defense, Cohen. This Report generated a great deal of interest and reaction from scholars across the globe. The article will introduce the broad outline of this Report and provide a summary of the principal criticisms that it has generated. This sets the stage for approaching the problem that is sensitive to the issue that this phenomenon be explore with a view to developing usable insights and data as well as methods and guidelines that may be of value to policy makers who have responsibility for acting in response to the problems of genocide and mass atrocity. The article then explores the problem with the specific emphasis on a better understanding of the Holocaust. It reviews anti-Semitism from a multi-disciplinary perspective. It focuses on the influence of American anti-Semitism on the German Nazis, it explores the endurance of anti-Semitism in Germany via its intellectual and scholastic elite, and it explores the political psychology of Hitlerism prior to the Second World War. The article then explores the problem that anti-Semitism may be a necessary condition of genocide but it is not sufficient. This requires us to understand the jump from anti-Semitism that is repressive and dominating to the decision to exterminate a population of human beings completely. This requires us to more carefully explore specific features of the Nazi decision process as well as its framework of social control. With this background the article focuses on developing the theoretical and methodological intellectual skills that have been developed in the context of the policy sciences to provide an approach to the challenges generated by the problems of mass murder and genocide which will guide a policy maker to more realistic, timely, and effective interventions. The article then explores five distinctive but interrelated intellectual tasks required of research to guide inquiry and policy making. These intellectual tasks include a disciplined commitment to the clarification of the value goals implicated by the problems of mass murder and genocide; it focus as well on the intellectual task which requires a careful specification of the trends in past decision that have sought in some measure of efficacy to respond to these problems; it focuses of the third intellectual task which is to understand the scientific conditions that have shaped the nature of the trends; it then focuses on the fourth intellectual task which is the task of forecasting the prospect of mass murder and genocide and the possibility of constraining it. Finally theory requires an element of creativity. That would be expressed in terms of the forecast about the prospect of genocide and mass murder which could be understood as a tentative forecast

of an optimistic and a pessimistic nature. The creative aspect of this would be the invention off strategies that might direct intervention of a trend in the direction of the optimistic possible future.

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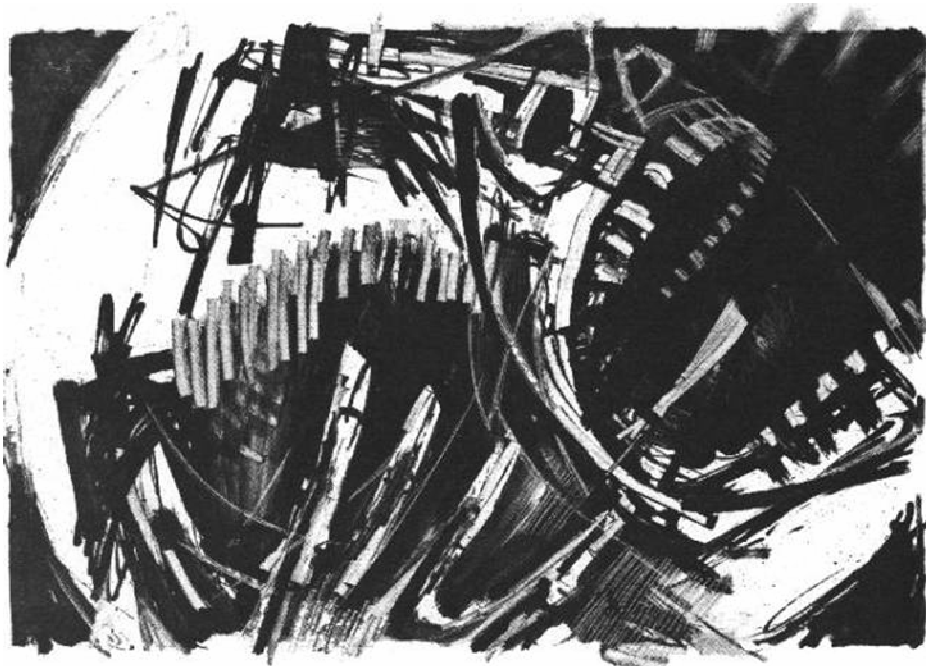WINSTON P. NAGAN[*]

&

AITZA M. HADDAD[**]

Figure 1: Contemporary Art Expressions Symbolizing the Horror of the Holocaust[1]

[*] Winston P. Nagan, J.S.D. (1977) is Sam T. Dell Research Scholar Professor of Law in UFL College of Law. He is widely published in human rights, a fellow of the RSA and the interim Secretary General of WAAS. He is also an affiliate Professor of Anthropology and Latin American Studies and the Director of the University of Florida Institute for Human Rights, Peace and Development.
[**] Aitza M. Haddad, J.D. (2010), LL.M. (2011) is a Fellow of the University of Florida Institute for Human Rights, Peace and Development.
[1] *Art: Visions stained by the Holocaust*, Philadelphia Inquirer; Posted by John Guzlowski (11/21/2010). Three East Coast artists, two of whom are survivors, exhibit their work on the Holocaust.

TABLE OF CONTENTS

INTRODUCTION

In a recent speech President Obama stated that the prospect or imminence of mass atrocity constituted an important US National interest which might require the US to act.[2] In Obama's words, "As President, I refused to wait for the images of slaughter and mass graves before taking action".[3] The particular prospective atrocity he had in mind was the possible fall of the city of Benghazi to the Libyan dictator Gaddafi. Gaddafi had indicated that he intended to order severe retribution on the inhabitants of that city with the implication of mass murder.[4] This was an important clarification of the importance of national interest to events implicating and compromising the most fundamental values relating to human dignity and humanitarian concerns. In particular it affirms the idea that certain fundamental global interests are also basic national interest priorities. This idea seems at least implicit after 1948 when the international community adopted the first Human Rights Treaty which targeted genocide as a practice of universal criminal importance.[5] Here the implication was that every sovereign state that joined the international community under the UN Charter was implicitly undertaking the obligation that the resistance to and prevention of genocide and mass murder was also an obligation that shaped the nature of sovereign interests in the world community. However, for a number of reasons there has been a tendency to weaken the resolve to a stridently police global atrocities, and take affirmative action to ensure that it is prevented. To understand the jurisprudence of the Genocide Convention it is useful to refer to an early ICJ case, *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*.[6] In this case the ICJ made the following point about the conceptual basis of the Genocide Convention:

> "The origins of the Convention show that it was the intention of the United Nations to condemn and punish genocide as 'a crime under international law' involving a denial of the right of existence of entire human groups, a denial which shocks the conscience of mankind and results in great losses to humanity, and which is contrary to moral law and to the spirit and aims of the United Nations. The first consequence arising from this conception is that the principles underlying the Convention are principles which are recognized by civilized nations as binding on States, even without any conventional obligation."

We should also consider the identification and the definition of the protected groups covered by the Convention and consider whether there are other groups that are identifiable by a cultural indicator or badge and therefore may be vulnerable to the policies and practices of group extinction: political groups, economic and social groups, linguistic groups, gender related groups, and any other group for which there is an objectively

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[2] *Statement by the President on the 15th anniversary of the genocide at Srebrenica*, The White House Office of the Press Secretary (July 11, 2010)

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

[4] *Benghazi to the Libyan dictator Gaddafi*, Reporting by Souhail Karam, writing by Tom Heneghan, Editing by Elizabeth Fullerton (March 17, 2011)

[5] Schabas, W.A. *Convention on the Prevention and Punishment of the Crime of Genocide; Paris 9 December, 1948*, Codification Division, Office of Legal Affairs United Nations (2008)

[6] *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide (Advisory Opinion)*, [1951] ICJ Reports 16

determinable symbols or marks of distinguishing identity. The elements of the crime of genocide are also important. Criminal law distinguishes a physical element (*actus reus*) and a mental element (*mens rea*). In short an indictment for genocide requires the prosecutor to prove the material facts as well as establish the accused's "guilty mind". The Convention also defines genocidal acts. These are as follows:

(a) Killing members of the group;
(b) Causing serious bodily or mental harm to members of the group;
(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
(d) Imposing measures intended to prevent births within the group;
(e) Forcibly transferring children of the group to another group

Other claimed acts are still somewhat contested such as Serbian practices of sexual aggression against Bosnian and Croatian women; Ethnic cleansing as a form of genocide; Cultural genocide; Ecocide; Democide; Apartheid; Weapons of Mass Destruction. Between 1992 and 1994 the outbreak of ethnic conflict in the former Yugoslavia and Rwanda also required the application of the Genocide Convention to the specific circumstance of these conflicts. For example in the former Yugoslavia the policy and practice of ethnic cleansing were characterized as a form of Genocide. The creation of *ad hoc tribunals* followed these two situations.[7]

In 2006 the ICJ determined that the crime of genocide was also a peremptory norm (*jus cogens*) of public international law.[8] One threshold question is that, if we have criminal liability for violations of humanitarian law, why is there not a necessary overlap with the crime of genocide and why should genocide not be prosecuted as a violation of humanitarian law. The Nuremberg Trials established that violations of humanitarian law are only actionable in the context of war. Thus, genocide which may operate in war and peace is a crime that is in certain respects more inclusive. Additionally, there are differences concerning the elements of liability under each of these crimes. The Rwanda Tribunal explains as follows:

"Genocide requires proof of an intent to destroy, in whole or in part, a national, ethnical, racial or religious group; this is not required by extermination as a crime against humanity. Extermination as a crime against humanity requires proof that the crime was committed as a part of a widespread or systematic attack against *a* civilian population, which proof is not required in the case of genocide."[9]

It has been recognized that the trial of the major war criminals at Nuremberg was described by that tribunal in terms constitutive of genocide although the Court did not use the term genocide in its judgment. However a review of the section of the judgment labeled "Persecution of the Jews" provides an important clarification of the application of the

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[7] *Prosecutor v. Kambanda* (Case No. ICTR-97-23-S)
[8] *Dem. Rep. Congo v. Rwanda: Armed Activities on the Territory of the Congo, Jurisdiction of the Court and Admissibility of the Application*, Judgment of Feb. 3, 2006 recognizing genocide as a violation of jus cogens.
[9] *The Prosecutor v Alfred Musema*, Case No: ICTR-96-13-T, Judgment of 27 January 2000, Tribunal Pénal International pour le Rwanda (International Criminal Tribunal for Rwanda)

genocide idea to the specific facts of Nazi policy and practice.[10] The following quote provides an indication of what the Court meant:

> "The persecution of the Jews at the hands of the Nazi Government has been proved in the greatest detail before the Tribunal. It is a record of consistent and systematic inhumanity on the greatest scale. Ohlendorf, chief of Amt III in the RSHA from 1939 to 1943, and who was in command of one of the Einsatz groups in the campaign against the Soviet Union, testified as to the methods employed in the extermination of the Jews. He said that he employed firing squads to shoot the victims in order to lessen the sense of individual guilt on the part of his men; and the 90,000 men, woman and children who were murdered in one year by his particular group were mostly Jews."

The term genocide is a neologism. It is a term invented by a Polish Lawyer and activist, Rafael Lemkin. He created the term by combining two words; one Greek, one Latin. The Greek word *'genos'* means race or nation or tribe. The Latin term *'caedere'* means to kill. Lemkin quotes Hitler from *Mein Kamph*:

> "the greatest of spirits can be liquidated if its bearer is beaten to death with a rubber truncheon'); in the cultural field (by prohibiting or destroying cultural institutions and cultural activities; by substituting vocational education for education in the liberal arts, in order to prevent humanistic thinking, which the occupants consider dangerous because it promotes national thinking); in the economic field (by shifting the wealth to Germans and by prohibiting the exercise of trades and occupations by people who do not promote Germanism 'without reservations'); in the biological field (by a policy of depopulation and by promoting procreation by Germans in the occupied countries); in the field of physical existence (by introducing a starvation rationing system for non-Germans and by mass killings, mainly of Jews, Poles, Slovenes, and Russians); in the religious field (by interfering with the activities of the Church, which in many countries provide not only spiritual but also national leadership); in the field of morality (by attempts to create an atmosphere of moral debasement through promoting pornographic publications and motion pictures, and the excessive consumption of alcohol)."[11]

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[10] *Opinion and Judgment of the Nuremberg International Military Tribunal or the Trial of German Major War Criminals for War Crimes and Crimes Against Humanity*, Nuremberg, 30th September and 1st October, 1946
[11] Dan Stone, *Raphael Lemkin on the Holocaust*, Journal of Genocide Research, 7(4), 539–550 (December 2005)

Figure 2: An artistic representation of aspects of dehumanization by medical experimentation, done with callous cruelty in Auschwitz.[12]

I. THE ALBRIGHT-COHEN REPORT AND ITS CRITICS

The persistence of genocide and mass atrocity suggests an important challenge for global public order. One of the central problems of genocide is that although it is criminalized, in general criminal sanctions will only kick in after the damage has been done. And the criminal sanction may be hopelessly disproportionate to the magnitude of the crime. These concerns, and others, have had an important national institution, The United States Institute of Peace, generate an important study led by two high level former administration officials, Secretary of State Madeline Albright and Secretary of Defense William Cohen, on the issue of genocide and mass atrocity, the implications of prevention, and appropriate policy responses. Their Report was in part influenced by the Obama National Security Strategy Paper of May 2010. The Report stresses that if prevention fails, "the United States will work both, multilaterally and bilaterally, to mobilize diplomatic, humanitarian, financial and – in certain instances – military means, to prevent and respond to genocide and mass atrocities".

The Albright-Cohen Report notes the following: "The world agrees that genocide is unacceptable and yet genocide and mass killings continue. We have a duty to find the answer before the vow of '*never again*' is once again betrayed".[13] The Report is important because it brings the focus of influential figures, in a major power, to the global problem of genocide and atrocity and what that great powers responsibility is to contribute to the prevention of genocide and atrocity. The Report has generated its critics in influential scholarly circles. The Report in fact has received trenchant criticism from some scholars. A representative critic is that of Hirsh[14]; he identifies five major problems in the Report. These are as follows:

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

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[12] Edith Birkin, *"A Camp of Twins – Auschwitz"*, from the article: *Holocaust Art Exhibit – Unspeakable* (1980-82)

[13] Albright, M. & Cohen, W. *Preventing Genocide: A Blueprint for U.S. Policymakers*, United States Holocaust Memorial Museum (2008)

[14] Hirsch, H. *Critical Viewpoints on the Cohen-Albright Report by The Journal of the International Association of Genocide Scholars*, Genocide prevention Now; GPN Issues, Issue I (Winter 2010)

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

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

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

5. He notes that the "clashing cultures" of the academy and the policy makers may contribute to different perspectives with academics taking a more analytic and critical view and policy makers arguing they are more "practical." In any case, Hirsch argues these are critical weaknesses which must be addressed if this report is to influence policy.[15]

A representative view from Latin America is indicated in the comments of Daniel Feierstein from Argentina.[16] Feierstein insists on a more critical appraisal of US foreign policy and the negative consequences of some of its interventions in the global community. He therefore insists that there are two separate issues: first, what United States can and should do to prevent genocide and second, what it should stop doing. Professor Jacques Sémelin (Paris) has seen the Report in a more constructive way and believes it will stand "as a first and promising step".[17] An important but excessively harsh appraisal of the Report is given by David Rieff.[18] Rieff notes that the prevention of genocide is a challenge for the institutional structures, strategies, and partnerships according to the Report. He also approves of the strategies recommended which require informational, early warnings processes as well as early prevention via preventive diplomacy, and when all else fails, the possibility of the military option. He therefore sees value in either creating of strengthening the institutional structures of the US Government as well as the United Nations System. In this latter regard there is a clear connection between the UN's enunciated "responsibility to protect doctrine adopted by the World Summit in 2005". Rieff starts with a concern that civil society activism may be flawed and thus provide an incentive that may be consummated as bad policy. In short, he draws attention to the complexity of foreign social conflict and the importance of an understanding of the predicate to the question of intervention. He draws attention to the fact that the *Save Darfur Movement* crystallized long after the bulk of the killings had ended. He concludes:

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[15] Hirsch, H. *The Genocide Prevention Task Force: Recycling People and Policy at Genocide Studies and Prevention*, Volume 4, Number 2, Summer 2009, pp. 153-154 (Article)

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

[17] Sémelin, J. *An International But Especially American Event at Genocide Studies and Prevention* - Volume 4, Number 2, Summer 2009, pp. 161-166

[18] Rieff, D. *The Persistence of Genocide; "Never Again," again and again…* Policy Review No. 165, Pages 1-9, Distributed by the Hoover Institution Stanford University (February 1, 2011)

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

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

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

Grievances over inequitable distribution of power and resources appear to be a fundamental motivating factor in the commission of mass violence against ethnic, sectarian, or political groups. That same inequality may also provide the means for atrocities to be committed. For example, control of a highly centralized state apparatus and the access to economic and military power that comes with it makes competition for power an all-or-nothing proposition and creates incentives to eliminate competitors. This dynamic was evident in Rwanda and Burundi and is serious cause for concern in Burma today.

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

Expanding on his concern for the excesses of generality, Rieff actually says that the Albright-Cohen approach may generate a serious limitation on critical analytical thought skills that are crucial for a much clearer picture of genocide and responsibilities in intervention. We suspect that Rieff is being hypercritical of the Report here. It seems to us that the Report makes an important contribution in gravitating from the generalization of social conflict to the specific role of decision making as the critical variable in initiating the

conspiracy to commit genocide and actually executing the conspiracy in practice. We again quote the passages Rieff uses to justify he's harsh criticism:

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

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

Of course every case of genocide is often situation specific in terms of the nature of the context of conflict and the role of decision as the critical triggering mechanism. Here there is a crucial epistemological problem. In general there is an antipathy to commitments to intervene in what are usually labeled *ethnic conflicts*.[19] The Conventional wisdom is that such conflicts are inexplicable and irrational and therefore intervention into something that is not understood is hard to justify. We shall revisit this matter as well. Although an important contribution to the epistemological issue here is the judgment of Nuremberg. Here we have an ethnic conflict writ large. The Court penetrates the veil of anonymity by the identification of the Human Agents behind State decision making and holding them responsible.

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

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[19] For useful discussion see Dennis J. D. Sandole, *Capturing the complexity of conflict: dealing with violent ethnic conflicts in the post-Cold War era*, Psychology Press (1999); For further discussion which clarifies the issue see Anna Stavrianakis, *A Tale of Two Ethnicities? An Analysis of Approaches to 'Ethnic Conflict': The Case of Kosovo*, Global Politics Network (2002); See also Carol S. Lilly, *Amoral Realism or Immoral Obfuscation?*, Slavic Review, Vol. 55, No. 4 (Winter, 1996), pp. 749-754

Holocaust to determine whether there are some insights from that experience which may be relevant to the work of the Albright-Cohen Report.

II. UBIQUITY OF GENOCIDE AND MASS MURDER

The primary victims of the worst illustration of genocide in historical memory are the ones of the Holocaust. And the survivors of that tragedy have promoted the importance of the global value we attach to the symbols "never again." Scholars maintain that the origin of the phrase "Never Again" made its first appearance in hand made signs created by the survivors of the Buchenwald death/concentration Camp. Since Jews were the primary victims of the Holocaust the terms may have included a narrower ethnic meaning. That meaning could imply that Jews were *never again* to be victims of mass murder by the Nazis in Germany. In this sense the terms *never again* are restricted to Jewish victims and now extinct victimizers. Since World War II there's no obvious example of genocidal behavior targeting the Jews as such. However, the post-war period has witnessed the persistence of genocide and atrocity on a global basis. The symbols *never again* have been given memorial status in several countries that had experienced mass atrocity. For example: Countries like Chile, Rwanda and Argentina. The Argentinean truth report is in fact titled "Nunca Más."[20] "Never Again" has been used to memorialize after the fact of genocide and mass atrocity. Elie Wiesel, a Holocaust survivor has lamented that if the world had learned anything "there would be no Cambodia, and no Rwanda, and no Darfur, and no Bosnia".[21] [22]

Notwithstanding the lesson of the Holocaust and the further lessons of criminalizing the worst elements of atrocity, the international community has experienced numerous examples of genocide and mass murder in the aftermath of these events.[23] This suggests that perhaps it is worthwhile taking a fresh look at the conditions and consequences that led to the Holocaust from the perspective that it is representative of a significant global problem. Perhaps the insights that we can draw from such reexamination that may give us the outlines of intellectual and policy strategies that may better permit the approximation of the desired goal or objective of "never again." Some of the conclusions that genocide scholars suggest for the uniqueness of the Holocaust are as follows;

1. The most shocking event of the 20th century;
2. The most terrible event in modern history;
3. The most extensive effort at genocide in history;
4. The ultimate expression of genocide;
5. The archetypal event of mass murder in human history;
6. Stands alone in the history of the West and in the history of genocide;
7. A global attack on Western civilization;

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[20] *Nunca Más: Report of the Argentine National Commission on Disappearance of Persons*, New York: Farrar Strauss Giroux (1985)

[21] Rachel Sklar, R. *Wiesel in Buchenwald: The Moral Challenge to Learn, and Act* (June 5, 2009)

[22] Foxman, A.H. *Never Again?* – For decades Jewish leaders and others of good will had repeated the litany "Never Again!" It has been a rallying cry and an expression of our determination that the horror of genocide will be repeated. Now I find myself forced – to my shock and dismay – to add a question mark to the phrase: "Never Again?"

[23] Sindelar, D. *World: Post-Holocaust World Promised 'Never Again' -- But Genocide Persists*, Radio Free Europe/Radio Liberty (January 26, 2005) – For decades Jewis leaders

8. The Nazis had a regime that was the most genocidal the world had seen and also the cruelest;
9. Steven Katz suggests:
   "When I argue for the uniqueness of the Holocaust I intend only to claim that the Holocaust is phenomenologically unique by virtue of the fact that never before has a state set out, as a matter of intentional principle and actualized policy, to annihilate physically man, woman, and child belonging to a specific people. A close study of the relevant comparative historical data will show that only in the case of Jewry under the Third Reich was such all-inclusive, non-compromising, unmitigated murder intended."
10. The Holocaust is unique "because it was a genocide for the purpose of reinstalling the right to genocide. Hitler was not unprecedented in ruthlessly and massively breaking the commandment "Thou shalt not kill!"; he was irreducibly distinct from other mega-murderers by abrogating it". In this sense the extermination of the Jews was critical for the extermination of the principle "thou shalt not kill", a principle from the Jewish tradition which condemned the claim of Hitler to kill without restraint. Indeed to kill is a matter of right.

It is extremely difficult to compare mass murder, atrocities and genocide-like events across time, culture and space. Some historians would say that from a historical perspective each identifiable program of genocide and mass murder can only be genuinely understood in terms of its own specific circumstances and precipitating conditions. On the other hand the effort to understand the uniqueness of the Holocaust has to confront the effort to internationally legislate genocide as an international crime meaning that whatever the particular distinctiveness is of a particular genocide it contains certain elements that remain comparable cross-culturally and inter-temporally and that those elements which may lead to actionable criminal prosecutions are not unique or situation specific from a jurisprudential point of view. However, this only suggests that the legal definition of the crime of genocide provides us with a focal lens which prescribes what we see and use and what we see and discard and may as well provide such a coloring to the focal lens that in fact there may be a great deal that we do not see. This therefore suggests that there are multitude of disciplinary perspectives that may be used to focus the lens of observation on genocide in general and the Holocaust in particular. The law may not generate a method and a process and a focus that is adequate to understand the complete cultural and moral salience of a tragedy such as the Holocaust. It may be that historians unconstrained by the focal lens that limits what is observed about genocide in law may add insights that are crucial to understanding why it happened and what we should do to prevent it from happening again.

Below we reproduce statistics about the scale of mass murder as recorded by historians prior to the beginning of the 20th century;

Table 1: Selected Pre-20th Century Democide and Totals[24]

Cases	Years [2]	Democide (000) [3]	
In China	221 B.C.-19 C. A.D.	33,519	[4]
By Mongols	14 C-15 C	29,927	
Slavery of Africans	1451-1870	17,267	
Of Amer-Indians	16 C-19 C	13,778	
Thirty Years War	1618-1648	5,750	
In India	13 C-19C	4,511	[5]
In Iran	5 C-19 C	2,000	[4,5]
In Ottoman Empire	12 C-19 C	2,000	[5]
In Japan	1570-19 C	1,500	[5]
In Russia	10 C-19 C	1,007	[5]
Christian Crusades	1095-1272	1,000	
By Aztecs	Centuries	1,000	[6]
Spanish Inquisition	16 C-18 C	350	
French Revolution	1793-1794	263	
Albigensian Crusade	1208-1249	200	
Witch Hunts	15 C-17 C	100	
Total For All Cases	pre-20 C	133,147	
Hypothetical Total	30C B.C.-19C A.D.	625,716	[7]
Inter'l war-related dead	30C B.C.-19C A.D.	40,457	[8]
Plague dead (Black Death)	541 A.D.-1912	102,070	[9]

Notwithstanding the voluminous literature dealing specifically with the Holocaust, there is still great concern that a truly complete picture has not emerged. According to Daniel Goldhagen:

"Only a fraction of such information exists for other mass murderers. Generally, little is known about the killing institutions and their members. Hence, an analysis of why and how the perpetrators implemented most exterminationist and eliminationist programs relies on less voluminous and good information… Overall conclusions must be provisional and tentative, until more complete information is uncovered about other mass eliminations…"[25]

Goldhagen also suggests that multiple factors contribute to the nature of mass murder in our time. He lists five important factors;

1) Features of modernity and the modern State;
2) Structural relationships within countries;
3) International contexts;
4) Beliefs about certain groups and about politics and society; and
5) Proximate factors that produce opportunity.[26]

We agree with Goldhagen's thesis that multiple factors coalesce to produce outcomes like the Holocaust and mass murder. In the following next section of this article, we attempt to integrate numerous factors to improve our understanding of the Holocaust.

A. ANTI-SEMITISM: A HISTORICAL BACKGROUND

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[24] *Table 3.1: Selected Pre-20th Century Democide and Totals*, in Murder by Government by Rummel, R.J. (1994); [1] From STATISTICS OF DEMOCIDE; [2] Unless otherwise noticed years and centuries are AD; [3] Unless otherwise noticed these are a best guess estimate in a low to high range; [4] Excludes democide in China by Mongols; [5] An absolute low; [6] A very speculative absolute low; [7] From STATISTICS OF DEMOCIDE. Calculated from the 20th Century democide rate and the and the population for each century since 30 BC; [8] From table STATISTICS OF DEMOCIDE. Total undoubtedly inflated by democide; [9] A minimum: includes plague dead in circa 541-542 AD; 1346-1771 in Europe; 1771 in Moscow 1894 in Hon Kong; and 189801912 in India. From Duplaix (1988, p. 677-678).
[25] Daniel Johan Goldhagen, *What we to know about the Holocaust': An Exchange*, The New York Review of Books, Vol. LVII, Number 19, p.64 (December 9, 2010)
[26] *Id.*

Anti-Semitism is a virulent form of racial prejudice. We would submit that it is an essential precondition for a genocidal outcome. The question is; what is anti-Semitism, and what are the roots of anti-Semitism. Why is it that it has endured through multiple generations in the European context and why, after the Holocaust, is it still a serious concern in modern Europe?

What drives anti-Semitism we would submit is found in the emotional dynamics of a dominant in-group. Those emotional dynamics are characterized by a widespread flow and acceptance of negative sentiment. Negative sentiment is a psychosocial process of community wide salience. Below we reproduce a model of the structure of negative sentiment as a social process. Later in this article we expand the effort to rethink anti-Semitism against the backdrop of the social processes of negative sentiment.

Anti-Semitism in benign form has a close affinity to racial discrimination.[27] When racial discrimination gravitates to racial prejudice it represents a quintessential form of anti-Semitism. A more lethal form of anti-Semitism emerges when anti-Semitism comes in the form of domination and subjugation along the lines of the Apartheid system. This form of anti-Semitism was reflected in the anti-Jewish policies and practices of the Nazis prior to the adoption of the final solution as a policy. The most extreme form of anti-Semitism culminates in the policy and practice of the wholesale extermination of the community using the administrative and industrial technologies of the modern state.

This background about anti-Semitism provides many scholastic and intellectual challenges which continue to make the subject of anti-Semitism scholastically important and significant for humane public policy which seeks to eradicate it. The concerns include the development of insights into the challenges of anti-Semitism and are also reflected in a concern for the social consequences and policy implications of the generation of such knowledge. From this perspective genocide, including the version represented in the Holocaust constitutes a problem of global magnitude. Moreover, one of the most critical legal developments in that the global response to genocide has been the Convention that seeks to globally outlaw genocide.[28] The problem with the Convention, in part, is that it identifies protected groups leave out a large segment of the human community who experience mass murder in which the symbols of identity which are a necessary predicate for mass murder are not accounted for. In any event, the central insight of the Genocide Convention is that its definition of the protected class is dependent upon some interior symbol of identity which is a necessary but not sufficient condition of genocide or mass murder. It is for this reason that scholars such as Rummel proposed the concept of *democide* to fill the gap left by the Genocide Convention.[29]

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[27] Freshman, Clark, *Whatever Happened to Anti-Semitism - How Social Science Theories Identify Discrimination and Promote Coalitions between Different Minorities*, 85 Cornell L. Rev. 313 (1999-2000)

[28] *Convention on the Prevention and Punishment of the Crime of Genocide*, Adopted by Resolution 260 (III) A of the U.N. General Assembly on December 9, 1948 and entry into force on January 12, 1951.

[29] Rummel, R.J., *Murder by government* (1994)

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

International Law also proscribes racial discrimination. Racial discrimination cannot happen without the boundaries of the "non-we", and the symbols of supporting negative sentiment. However, anti-Semitism and racial prejudice are simply more potent versions of the targeting of the victims with the symbols and practices of negative sentiment. International Law has also sought to make apartheid a crime against humanity. Apartheid functioned explicitly on the demarcation of human communities according to the symbols of race and ethnicity. It therefore, had much in common with anti-Semitism and racial discrimination. What distinguished apartheid was that apart from the symbolic and legislative identification for the ascription of human group identity, it sought to impose, as a consequence of these classifications, a system of indefinite domination and subjugation. In this sense apartheid in theory and practice was one of the most virile and aggressive forms of racism. The historic trend of democide in the 20th Century is statistically represented in the table reproduced below. We believe that this provides an adequate statistical indication of the problem from the point of view of social political practice worldwide.

Table 2: 20th Century Democide[30]

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[30] *Table 1.2: 20th Century Democide*, in Murder by Government by Rummel, R.J. (1994)

REGIMES	YEARS	DEMOCIDE (OOO)[1] TOTAL	DOMESTIC	GENOCIDE	ANNUAL RATE %[2]	
MEGAMURDERERS	**1900-87**	**151,491**	**116,380**	**33,476**		**[4]**
DEKA-MEGAMURDERERS	**1900-87**	**128,168**	**100,842**	**26,690**	**0.18**	**[4]**
U.S.S.R.	1917-87	61,911	54,769	10,000	0.42	
China (PRC)	1949-87	35,236	35,236	375	0.12	
Germany	1933-45	20,946	762	16,315	0.09	
China (KMT)	1928-49	10,075	10,075	Nil	0.07	[5]
LESSER MEGAMURDERS	**1900-87**	**19,178**	**12,237**	**6,184**	**1.63**	**[4]**
Japan	1936-45	5,964	Nil	Nil	Nil	
China (Mao Soviets) [3]	1923-49	3,466	3,466	Nil	0.05	[5]
Cambodia	1975-79	2,035	2,000	541	8.16	
Turkey	1909-18	1,883	1,752	1,883	0.96	
Vietnam	1945-87	1,670	944	Nil	0.10	
Poland	1945-48	1,585	1,585	1,585	1.99	
Pakistan	1958-87	1,503	1,503	1,500	0.06	
Yugoslavia (Tito)	1944-87	1,072	987	675	0.12	
SUSPECTED MEGAMURDE	**1900-87**	**4,145**	**3,301**	**602**	**0.24**	**[4]**
North Korea	1948-87	1,663	1,293	Nil	0.25	
Mexico	1900-20	1,417	1,417	100	0.45	
Russia	1900-17	1,066	591	502	0.02	
CENTI-KILOMURDERERS	**1900-87**	**14,918**	**10,812**	**4,071**	**0.26**	**[4]**
TOP 5	1900-87	4,074	2,192	1,078	0.89	[4]
China (Warlords)	1917-49	910	910	Nil	0.02	
Turkey (Atatürk)	1919-23	878	703	878	2.64	
United Kingdom	1900-87	816	Nil	Nil	Nil	
Portugal (Dictatorship)	1926-82	741	Nil	Nil	Nil	
Indonesia	1965-87	729	579	200	0.02	
LESSER MURDERERS	**1900-87**	**2,792**	**2,355**	**1,019**	**.1**	**[4]**
WORLD TOTAL	**1900-87**	**169,202**	**129,547**	**38,566**	**.1**	**[6]**

1. Includes genocide, politicide, and mass murder; excludes war-dead.
   These are most probable mid-estimates in low to high ranges.
   Figures may not sum due to round off.
2. The percent of a population killed in democide per year of the regime
3. Guerrilla period. 4. Average.
5. The rate is the average of that for three successive periods.
6. The world annual rate is calculated for the 1944 global population

1. SOCIO-ECONOMIC STATUS, RELIGIOUS IDENTITY AND ANTI-SEMITISM

It is possible that all groups who are in the positions in which they are victims of discrimination, prejudice, domination or extinction will carry a unique historical experience which reinforces the social processes of negative sentiment. There is much that is unique in Jewish cultural history. We could pick an arbitrary date which deals with the defeat of Jewish resistance to Rome and the Roman extinction of the subordinate Jewish state. This event resulted in the exodus of Jews from the Holy Land. That exodus took Jewish groups to Western and Eastern Europe. Invariably wherever Jews settled in Europe they constituted a minority. What was unique about the Jewish exodus and the experience of the Diaspora was that at all levels of the Jewish community they carried a powerful tradition of culture and learning. They were migrating into contexts in which they were only glimmers of learning as a community right. Indeed, for hundreds of years Europe was engulfed in the dark ages. The Europeans were in the dark about learning and culture but the Jewish people were not.

The religious tradition, with its emphasis on the religious texts, makes learning to read and write a religious obligation. This meant that small groups of Jews forming minority communities represented at general a higher level of cultural sophisticates than was characteristic generally in Europe. When Europeans emerged from the dark ages and invested themselves in the policies and practices of feudalism, again Jews were not part of

the feudal hierarchy from which all rights and duties flowed. For Jews to survive in such a context, required skills and alertness of imagination to identify sectors in feudal society however limited in which they could function economically. Hence, in the area of money exchanges, an area despised by the church, Jews with reading and counting skills could find some space for economic expression. We would suspect that the outsider status of the Jewish communities was tied to their ability to flourish in the margins, a matter that generated unease at the capacity to survive and even thrive on the margins. The Jewish occupations then which were confined to tax collectors and money lending, matters considered unchristian, including the idea that lending money was sinful. Being engaged in unpopular sources of economic activity lent credence to creating ethnic stereotypes that such ethnic identities coincided with insolence, greed and usury. The transformation of European society from feudal status to contract additionally enhanced the position of Jews in the community whose status was not tied to feudalism. A contract society enhanced the importance of the control, regulation of credit and debt and the exchange of money.

The socio-economic status of Jews as a successful on the margins social group amplified the symbols and myths of negative sentiment which targeted them. These include blaming Jews for the Black Death, suggesting that Jewish success was based on the mastery of magical powers and deals with the devil. A powerful and visceral myth was the myth of blood libel. Another powerful myth was the concept of host desecration. During the middle ages rulers required Jews to wear badges of identification, which meant that targeting them would be a simple matter. The Crusades, which were meant to recover the Holy Lands from Muslim conquest frequently, targeted Jews as well. The policy of identifying Jews as candidates for expulsions took place in England, France, Portugal and Spain. The reformation, a revolt against the Catholic Church, was not immune from the anti-Semitism impulse. Martin Luther himself stated that "we are at fault in not slaying them" (the Jews). The religious impulse that Martin Luther expresses is certainly not confined to the Christians of the Reformation. Anti-Semitism tended to be validated by most Christian's sects. So much so that in the United States at the turn of the last century two prominent Americans were leading forces in a virulent form of anti-Semitism. Both white Anglo-Saxons. It is worth identifying who they were and what the global impact was of their pathological anti-Semitism.

2. The American Influence on anti-Semitism

The first was Henry Ford Sr. Ford was a wealthy industrialist. He was an arch-reactionary and exhibited a partiality to emerge in fascism. Ford had taken over a small newspaper which he developed into a nationwide forum, *"The Dearborn Independent"*. In an infamous editorial titled "The International Jew: The World's Problem" he maintained that "There is a race, a part of humanity which has never yet been received as a welcome part." "This people, has ever been fouling the earth and plotting to dominate it. In order to eventually rule the Gentiles, the Jews have long been conspiring to form an "international super-capitalist government."" The Ford newspaper became a leading forum for anti-Semitic propaganda. Among the themes that Ford struck was the idea that the Anglo-

Saxons needed to fear the "international Jew". According to Ford the Jewish race was one "that has no civilization to point to, no aspiring religion... no great achievement in any realm..." "The Anglo-Saxons are portrayed as explorers, nation builders, and thinkers." As Ford was fond of telling people, "it was the Anglo-Saxons who overcame all odds to establish a great new civilization on the American continent. Their accomplishments throughout the centuries have proven that the Anglo-Saxon race is destined to "master the world"." Ford's rantings were put together in a book which blamed Jews as a group for all the problems of the world. The book was titled *"The International Jew: The World's Foremost Problem".* The book was published in Germany and had a significant influenced on Hitler. Critics claim that Hitler's own anti-Semitic diatribe Mein Kampf plagiarized parts of Ford's book. The admiration between Hitler and Ford continued as Ford donated to Hitler 50,000 Deutch marks every year on Hitler's birthday (*Who Financed Hitler?* By James and Suzanne Pool (1978)). Ford's book, *The International Jew*, was translated into German with a revised titled, "*The Eternal Jew".* Many Germans especially young Nazis commented on how they were inspired by the book and the iconic status of its author, Henry Ford. Ford's book was a bestseller in Germany and greatly influenced the ideas of Adolf Hitler. Indeed one of Hitler's associates indicated that Ford's book was a source of inspiration for Hitler.

Ford's anti-Semitism was continued in the US by the notorious Irish-American, Catholic Priest, Father Charles Coughlin. Coughlin republished the fraudulent document known as *"The Protocols of the Learned Elders of Zion"* with Ford's assistance. Coughlin was a radio hate promoting, rabble-rousing demagogue. According to Coughlin the critical question concerning war, peace and the Jews was this: "Must the entire world go to war for 600,000 Jews in Germany who are neither American, nor French, nor English citizens, but citizens of Germany?" Coughlin's anti-Semitism sought to portray the Jews as being the behind the scene supporters of international communism. In this regard, Coughlin state, "[i]f Jews persist in supporting communism directly or indirectly, that will be regrettable. By their failure to use the press, the radio and the banking house, where they stand so prominently, to fight communism as vigorously as they Nazism, the Jews invite the charge of being supporters of communism." And with a dire warning he suggested "[w]hen we get through with the Jews in America, they'll think the treatment they received in Germany was nothing." In providing a justification for his anti-Semitism, Coughlin reverted to religion stating that "Jewish persecution only followed after Christians first were persecuted."

3. ANTI-SEMITISM IN GERMANY PRIOR TO HITLER

In the previous section we drew attention to the significant influence of the American form of anti-Semitism represented by Ford and Coughlin; a form of anti-Semitism that was significant in the rise of Nazism. However, Germany also had a long tradition of anti-Semitism fueled by religion and additionally given the aura of scientific credibility in the domain of intellectual and scholarly activity. First, it would be useful just to backtrack into 19th century European history. This is a period when we see the emergence of nationalism as an important strut for the nation state. Nationalism tended to

attract an intermediate level of identity identifying ethnicity. This meant that when one collapses the ideas of nation, ethnicity and state into each other, there is a possibility that aggregates who do not fit within the ideas of ethnicity and nation will be left out. In short we can move the meaning of ethnicity into the more restricted meaning of the term racial. If this is true then nation states that have "others" that do not fit the racial or ethnic assumptions encased in the terms "nation state", would have an uneasy existence within the state as non-state others. It would seem that in the aggregate the Jewish community would fall into this vacuum of exclusion. Today we recognize that the ethnically homogenous state is an exception. The term nation does not carry the same limited universe of ethnically discrete human groups. One of the important theorists dealing with German nationalism in the early 19th century was the German philosopher Johann Gottlieb Fichte. Fichte was particularly focused on understanding and explaining the idea of "Germaness" as the root of German nationality and central to the state. The search for a distinctive cultural Germaness led him to consider the position of Jews and the Jewish question in the German state. According to Fichte it would be a political mistake to make Jews free and accord them German citizenship because he believed it would be harmful to the German nation. Indeed in other works he described Jews as "a state within a state" that could "undermine" the German nation. He was virulently opposed to the Jews receiving civil rights and suggested that they could receive civil rights only if it was possible "to cut off all their heads in one night, and to set new ones on their shoulders, which should contain not a single Jewish idea" (*Johann Gottlieb Fichte*, Stanford Encyclopedia of Philosophy (2006)).

Another great German thinker and philosopher was Johann Gottfried von Herder. Herder was obviously a great scholar and left a powerful legacy. He was particularly interested in understanding the importance of indicators of national identity to the idea of German nationalism. His central beginning point was the idea of organic nationalism. Such a nationalism emerged from the circumstances of geography, language, kinship and historical continuity. This was a model that suggested that communities in Germany that were not organic were essentially outsiders. Herder was a Hebrew scholar and deeply acquainted with Jewish culture. On the other hand his writings betray a lingering and disappointing strain of anti-Semitism. His writings indicate that however scholastically gifted he was he could not shed himself of *Juden-hass* (Jew-hatred). In his book *Ideas for the Philosophy of the History of Humanity* Jews are described as "parasites", "sharp practicing usurers who profited during the barbaric centuries of the Middle Ages" and he considered them more irritating than "leprosy".

Another great German scholar of the 19th century was Heinrich Gotthard von Treitschke. In 1871 when Germany was unified Treitschke's attention was drawn to the assimilation of Jews into German society. This, coupled with the social and economic successes that Jews experienced, led to what Treitschke called an awakening of a new national consciousness which had anti-Semitic elements in it. The motivation for this new consciousness was largely the identification of Jews with liberal humanistic ideology and

effeminate philanthropy. Although recognizing anti-Semitism as "ugly" it seemed to him to be legitimate in as much as it had a popular foundation in the German's community. In his view the current noisy activity was simply an expression of "long suppressed anger" which was genuine and legitimate. He recognizes this as the emergence of "a Jewish question". Treitschke was not alone in drawing attention to the idea that the Jews were the cause of social upheavals in Germany. Treitschke did not believe that the fundamental differences between Christians and Jews could be reconciled because he suggested that Jews had "usurped too large a place in our life". Treitschke's work was used to fan the flames of anti-Semitism with the objective of taking measures against the Jewish population. It would also be useful to draw attention to the way in which the idea of nationalism crept into the legal culture and legal philosophy of Germany. Here the scholar von Savigny saw law itself as an organic product of the volk. The unique and distinctive idea of the volk and of the law produced by the volk was that it was a product that was inspired by the volksgeist. The volksgeist was essentially unique to the volk itself. There was no room for outsiders with regard to the volk spirit. Thus, law provided a further indicator in strengthening the uniqueness of the force of ethnic, volkish nationalism. In the 19th century therefore laws were proposed to limit the rights of Jewish-Germans in terms of access to education, the professions, and other rights of citizenship. This is an indication that German anti-Semitism had a powerful backing in the development of theories of German nationalism and that the German intellectual tradition with its focus on nationalism also provided an intellectual and scholarly justification for anti-Semitism. By the time we get to the 20th century the combination of religion, nationalism, and the scholarly-scientific production provided a sturdy foundation in the form of anti-Semitism embraced by the Nazis after the First World War.

4. Anti-Semitism and the Psychology of Hitlerism prior to World War II

During the year 1993 Harold Lasswell, a political psychologist, did an appraisal of the emergent Hitlerism in Germany. In this study, which he titled *The Psychology of Hitlerism*,[31] Lasswell identified a key level of social stratification to which Hitler could appeal to strengthen the political basis of Nazism. This level of society he identified as the lower middle classes. This social class suffered significantly from the humiliation of Germany's defeat and suffered disproportionately from the economic deficits that resulted from the Treaty of Versailles.[32] Hitler was able to drive a wedge between the lower middle classes and the proletarian. The latter would identify with communism and thus became a class enemy of the German lower middle class. Additionally, while the lower middle class accepted criticisms of the profit system of the economic order they nonetheless sought to protect it. An important aspect of the lower middle class pattern of identification was the strong feeling of humiliation. It was therefore important that Hitler target them with a

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[31] Lasswell, H., *The Psychology of Hitlerism*, Political Quarterly 4 (1993) pp. 373-384
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renewed sense of "Germaness".[33] Given the deprivations they experienced in the economic system the ability to excoriate humiliation and cultivate a form of national resurrected pride in being German became a significant tool in how Hitler projected the symbols to influence this class.

One important tool of Germaness was an appeal to German nationalism which for Hitler implicated an ethnocentric dimension. This appeal was strengthened by the claim which he promoted that Germany's humiliating defeat was the result, not of battlefield losses, but the result of a fifth column in Germany which plotted the victory of the Allies. Hitler promoted the idea that fifth column traitors were largely Jewish. Thus, Germany's defeat could be ascribed to Germany's Jewish minority. Having absolved German nationalism of responsibility for the loss of the war and having placed the blame on Germany's Jewish minority Hitler had cleverly adopted the political rhetoric of the time with racially toned nationalism and anti-Semitism. According to Lasswell "nationalism and anti-Semitism were peculiarly fitted to the emotional necessities of the lower bourgeoisie."[34] This was a class that required new objects of devotion and new targets of aggression. To quote Lasswell "anti-Semitism provided a target for the discharge of resentments arising from damaged self-esteem; and since the scapegoat was connected with the older Christian tradition, guilt feelings arising from lack of personal piety could be expiated by attacking the Jew."[35] Additionally, anti-Semitism also performed an interesting ideological function. It was an alternative to the attacks on capitalism generated by proletarian socialists. At this time the proletarians were praising the workers and insulting all segments of the bourgeoisie. The national socialists were successful in diverting the most trenchant critics of capitalism coming from the left by substituting form capitalism the idea that "Jewish proletarian... was the root of all modern evils."[36] Additionally, Jewish connections to international finance were used to demonstrate that international finance, allegedly Jewish controlled, was irreconcilable with strident German nationalism. In short, "the crusade against the Jew became a legitimate act of devotion to the idols of Germanism.[37] The Nazi propaganda machine promoted a virulent form of anti-Semitism which described persons of Jewish ethnicity as "germs", "pests", "not human", "parasitic", "evil doers" and "sources of disease". As a group they had to "be destroyed in the interest of mankind". In the leading Nazi propaganda sheet *Der Stuermer* of 1939 the newspaper proclaimed:

> "A punitive expedition must come against the Jews in Russia. A punitive expedition which will provide the same fate for them that every murderer and criminal must expect. Death sentence and execution. The Jews in Russia must be killed. They must be exterminated root and branch."

Hitler's promotional anti-Semitism as a tool of political mobilization also strengthened political cooperation between the lower middle class and the aristocracy. The

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aristocracy still admires the idea that old-fashioned moneymaking was somewhat degenerate. The aristocracies' dislike of modern capitalism was in turn displaced on a dislike of Jews, the money lenders of tradition. In this sense the aristocratic dislike of Jewish capitalists permitted it to displace its hostility to capitalize on the Jews and at the same time cooperate with the non-Jewish capital. What it was established between the lower middle class and the aristocracy was the emergence of a common solidarity with Germanism and a common hatred of Semites. The role of the intellectual class in the strengthening of anti-Semitism in Germany is also important intellectuals are specialists in the invention and communication of political symbols that touch on history, morals, law, philosophy, and in the construction of cultural legends and myths. Weimar, Germany had abolished limitations on access to German universities. German universities produced an abundance of talent which the market could not absorb. Included in this universe of talent were Jews who were prominent in law, medicine, the arts, literature, journalism and science. This critical mass were competitors with rival intellectuals. Their position made them vulnerable to intellectual assault. Jews less entangled by localized traditions began to cater to the entire German market and to generate symbols that could appeal to Germans everywhere. This success became an instrument to reinforce anti-Semitism against the allegedly urbanized intellectual, Marxist-Jew. The creativity of Jewish intellectuals and scientists could be distorted as impure contributions to German culture imputed to foul Jewish intellectuals. Thus, for Hitlerrites the German race needed to be protected from contamination by disapproved races. And the purity of German blood would be a cornerstone of the new Germanism. Lasswell put it in these terms "the alien Jewish cankers" were traitors and they were not to go unpunished;

> "The dawning day of resurrection is nigh. The organized might of German manhood shall rise to purify the state and to recover the honor of Germany in the field of battle. Our blood shall not have been shed in vain. The flesh of our flesh shall not decay; it shall live in the glories of immortal Germany".

Lasswell provides the following insight into the effect of Hitler's propaganda;

> "You are not to blame for the disaster to your personality involved in the loss of the war. You were betrayed by alien enemies in our midst." The self-accusations which signify that aggressive impulses are turned against the self are thus no longer necessary; not the "sacred ego," but the Jews to blame. By projecting blame from the self upon the outside world, inner emotional insecurities are reduced. By directing symbolic and overt attacks against the enemy in our midst, Hitler has alleviated the anxieties of millions of his fellow Germans (At the expense of others)."

Figure 3: Nazi Propaganda for enlarging self-esteem and German ethnic identity.

Hitler's political success in consolidating his rule during the pre-war period lay in his ability in consolidating many other segments of German society which appeared to condone his excesses and did not oppose the centralization of authority inspired by the national associates. Culturally Germans were used to being submissive within the hierarchy of the family, the army, the bureaucracy and political parties. Thus, Hitlerism triumphed in the name of freedom socialism and nationalism. In this contribution Lasswell provided important insights into the role of anti-Semitism in the consolidation of Hitler's control of the German state. In particular the way in which he was able to mobilize the symbols of solidarity on the one hand and anti-Semitism on the other provide a compelling insight into the manipulation of the emotional predispositions, loyalties and hatreds of the German people.
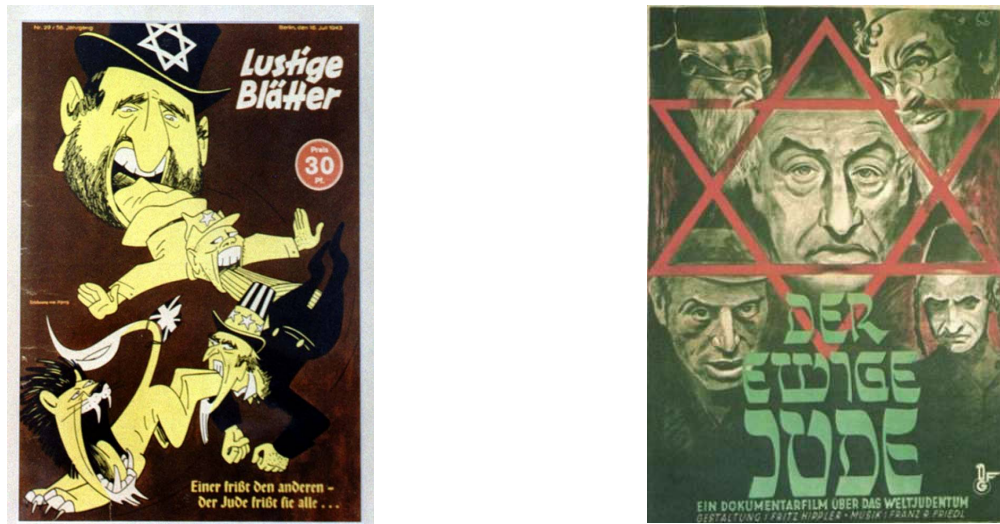

Figure 4: Nazi propaganda for demonizing Jewish identity.

Hitler's propaganda war against the Jewish people is a strong example of the role of negative sentiment in the management of emotions that essentially generate negative and destructive consequences for the victims of such sentiment. These complex processes clearly

led to the tragedy of the Holocaust. However, it is by no means clear that even these interested observers could have predicted the decisions and the implementation of those decisions relating to the extermination of whole races of people with the Jews at the top of the list of candidates for extinction.

B. CONTEMPORARY ANTI-SEMITISM

A contemporary problem, that some see as the reemergence of anti-Semitism in Europe, is the unpopularity of the government of Israel's policies regarding a settlement of its conflict with the Palestinians. Many pro-Israeli groups see the criticisms of Israel as being animated less of a concern for Palestinian rights than a reinvention with different labels and symbols of a new form on European anti-Semitism. An interesting survey published by the Anti-Defamation League focused on four questions in opinion polls as indicators of elements of anti-Semitism in European public opinion circles. The results of these four, and related questions, are reproduced below;

The social sciences may add significant insights into our understanding of the conditions that triggered the genocide including the sociology of the mass production of goods and services in an industrial state. The political scientists may approach the problem with a dissection of the processes of effective power and powerlessness in Nazi Germany. It may be that such insights as may be generated from an understanding of an exercise of Nazi power without restraint may provide some unique insights into the distinctiveness of the Holocaust. Additionally psychology and psychoanalysis may provide insights into the possible psychopathologies which might have permeated the decision processes of the Nazi elites. In this sense we may see important a unique insight into the type of power conditioned personalities that dominated the Nazi state apparatus. Additionally there may be the concern that the unique cultural distinctiveness and traditions of the victims may have conspired to provide a certain uniqueness to the Holocaust. From the victims point of view the culture distributes humanistic subjectivities and a strong moral sensibility about the limits of human conduct. Thus, the victims have difficulty even imagining a reality as completely unrestrained with an objective as deadly as the wholesale and complete annihilation of a people. Thus, since the gas chambers and crematoria do not fit into any possible moral picture of the victim, the victim willingly believes the rosy stories of his removal until when he realizes the truth it is too late. It could also be that this very humanistic and moral tradition of the Judaic culture was a moral and intellectual system that the Nazi elite saw as a major threat to its world view and the only complete extermination of its subjects would provide it with an unchallenged vista for its new moral order. One issue that comes into consideration is whether the uniqueness of the Holocaust is sustained by the uniqueness and durability of European anti-Semitism.

From this perspective we want to sharpen our understanding of the conditions that facilitated the Nazi plan for the wholesale of extermination of the Jewish people. There seem to be two issues here. First, when we look at genocide or mass murder historically we find that it is more ubiquitous than has been generally acknowledged. Although the growth

of norms and rules of restraint have in general seemed to accept such conduct particularly in times of intense social conflict, as being a normal part of the extension of that conflict to all members of the defeated other or enemy. In this sense we have inherited a history which in general had an element of collective amnesia. However, Rummel's work demonstrates that in the twentieth century murder by government and quasi-governmental entities reached the staggering statistics of hundred and seventy million plus.[38] In short, the modern state with advanced technologies of administration and science could radically become a lethal instrument of human destruction.

However, this record, tragic as it is, is quite different to the trends and the conditions that resulted in the tragedy of the Holocaust. There are states that have killed more people over time than the Nazis but the Nazis have killed more people than anyone else in a short period of time. The critical question is; is there in the historic trend and historic memory something that preserves powerful symbols that in European culture, secure a symbolic as well as political depreciation and marginalization of the Jewish community as a whole? Much has been written on the legacy and the endurance of anti-Semitism.[39] However, we are less confident about why it has endured over time with such virulence. This means that it is possible that political conditions may not be as critical to the survival and endurance of the anti-Semitic myth. The possible explanation is the psycho-social frequency and transmission of the critical symbols that feed the negative sentiment encapsulated in the collective personality of the persons prone to anti-Semitic perspectives.

The strength of the symbol certainly reinforced the boundaries of otherness. This may be a necessary but not a sufficient condition for a tragedy of the scope of the Holocaust. However, it remains a critically important question to know why it is that such a large number of Europeans could have internalized the negative values of anti-Semitism and repression. It is possible that the conditions in Europe—conditions of scarcity and deprivation that tended to generate a competitive conflict prone culture—were factors that influenced the way in which European children were acculturated to deprivations; and these experiences tended to produce personality types prone to the awareness of otherness and threats posed by the other. In general, European society is distinguished historically by the identification of ethnicity with national identity. These processes were unusually strong in Europe. There are contemporary lingering effects which have been seen in the war of the former Yugoslavia as well as the national question which has endured into the post Soviet era. Still, this is not a complete explanation. The integration of the idea of anti-Semitism into an aspect of Christian religious identity may account for the endurance of an anti-Semitism legitimated by the power of religion.[40] Thus, anti-Semitism could be seen as morally right behavior.

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[38] Rummel, R.J. *Death by government* (1997)
[39] Chanes, J.A. *Antisemitism: A Reference Handbook*, ABC-CLIO (2004)
[40] Williams. S.S. *The Origins of Christian Anti-Semitism*, Judaic Studies Program University of Central Florida (1993)

III. UNIQUE ASPECTS OF THE HOLOCAUST

One of the important insights that we distill from the context of so called ethnic conflicts is that the targeting of one ethnic group by another is usually legitimated or validated by a powerful religious or ideological symbol. Religion could fuel and strengthen this negative symbol by the myths of blood libel and the ascription of multi-generational guilt for the murder of God (the Christian God). Modern science has shown that in situations where there is conflict between ethnic groups what is critical to initiating and sustaining this form of conflict is the power of the symbol that legitimates or validates it.[41] We would suggest that Christianity has had within its belief system elements that serve to justify anti-Jewish negative sentiment. The most powerful of these Christian myths is the charge that the Jewish people collectively are responsible for the killing of Christ. All Jews, trans-generational, carry the burden of being responsible for the death of Jesus. Thus, Jews are collectively charged with "deicide". We would submit that the durability of anti-Semitism and its capacity for virulent policies and practices is partly rooted in a form of religious validation of a myth of deicide. It was only in 1964 that Pope Paul the VI repudiated this idea. The Second Vatican Council wrote that while "the Jewish authorities and those who followed their lead pressed for the death of Christ; still, what happened in His passion cannot be charged against all Jewish, without distinction, then alive, nor against the Jews of today." More recently, Pope Benedict the XVI repudiated the idea of Jewish collective responsibility for the death of Jesus. He explains in his latest book that in the Gospel of John, "the Jews" who instigated Christ's death should not be interpreted as "racist" or as a blanket condemnation of the people of Israel. He also noted that "John himself was ethnically a Jew, as were Jesus and all his followers," and that "the entire early Christian community was made up of Jews". The Pope argues from a close scholarly reading that passages speaking of Jesus' "blood" being upon the Jewish people and their children (Matt. 27:25) must be "read in an entirely new light from the perspective of faith." He wrote: "The Christian will remember that Jesus' blood speaks a different language from the blood of Abel (Heb. 12:24): it does not cry out for vengeance and punishment; it brings reconciliation". "It is not poured out against anyone; it is poured out for many, for all… Read in the light of faith … these words are not a curse, but rather redemption, salvation."[42] This is an effective repudiation of the idea that some Christian morality provided the justification for anti-Semitism. We should note that this apology had some two thousand years of incubation before it was publicly expressed. We would submit that a religious validation of anti-Semitism in part is responsible for its historic traction and endurance. It cannot be said that in all other cases of genocide and mass murder the power of religious validation of the demonization of the non-self "other" has operated with such strength in shaping the emotionalized orientations of the various target populations.

A. OTHER UNIQUE ASPECTS OF THE HOLOCAUST

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[41] Rupesinghe, K. & Tishkov, V.A. *Ethnic conflicts in the context of social science theories*, in Ethnicity and power in the contemporary world, The United Nations University (1996)

[42] Pope Benedict XVI *Jesus of Nazareth; Holy Week: From the Entrance Into Jerusalem To The Resurrection*, Ignatus Press (2011)

So far we have looked at anti-Semitism largely from a perspective of the victimizer. From the perspective of the victim there is another quality that conspires to enhance the possibility of victimization. The Jews of the Diaspora were a community without a state. The miracle is that this community could survive, and often thrive in a relatively hostile Diaspora.[43] Thus, survival, intellectual, scientific, cultural, jurisprudential, and in business skills generate the idea that disapproval from the majority only reinforces the competitive desire for excellence in all things of cultural and scientific importance. And Jewish historic excellence also created the cognitive dissonance that discrimination and repression only resulted in perceived success at survival skills. What is clear is the remarkable endurance of anti-Semitism and the equally remarkable ability of the Jewish community to preserve the best of its cultural distinctiveness and survive; At least until the tragedy of the Holocaust. We must therefore more carefully appraise what was distinctive about the Nazi tactics and strategies which lead to their desire for a final solution.

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

For the rest of society, they developed a powerful institution for monitoring the attitudes, and weaknesses, of all Germans. The most important activity here was the role of the confidential informer, under the authority of the Gestapo. The Nazi intelligence literally was able to establish a system of confidential informers in every city, street, and precinct in Germany. The candidate informer was usually someone who had a personal secret to hide. In return for not disclosing personal secrets one had to serve as an informant. The informer functions in the home, on the streets, in the churches, and in every community organization. The confidential informer would supply the intelligence about who had anti-patriotic thoughts, who opposed the racial policies, who was friendly to Jewish interests, and who embraced liberal or left oriented ideological perspectives. This intelligence process was so ubiquitous that it probably represented one of the most complete forms of social control and repression in history. It was an unprecedented process of

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[43] Ehrlich, M.A. *Encyclopedia of the Jewish Diaspora: origins, experiences, and culture: Volume 1* (2009)

repression. It was an effective means of silencing and intimidating major portions of German population. This permitted the Nazi elite to have a free hand to dispose of the unpopular Jewish minority as they saw fit. With such total control and no restraint in their repression of Jews and others deemed undesirable, the Nazis were free to act out the pathological racial fantasies which they could displace on a completely helpless community. The technique used by the Nazis for social control using the confidential informer continued to flourish in East Germany where the Stasi[44] were able to accumulate a staggering volume of files on virtually every East German.[45]

Even within the context of virulent anti-Semitism and violence prone repression, it is not necessarily the case that it should have resulted in and outcome that developed a systematic and organized process that elevated mass murder to an industrial scale. This is not resolved question although some tentative suggestions may find some traction with future historians. It is very possible that the speed and surprise of Hitler's successes in the conquest of Western Europe, as well as his initial invasion of Russia represented an opportunity for the Nazi leader to act out his darkest psychopathological fantasy and this was triggered by the *Führerbefehl* which authorized the objective of a final solution to the Jewish question. In short Hitler's conquest cultivated an expectation that he could press his psychopathology of anti-Semitism as far as he could with the expectation of success experienced in his military successes.

On July, 31 1941 Göring gave a written authorisation to SS-Obergruppenführer Reinhard Heydrich, Chief of the Reich Main Security Office (RSHA) to "make all necessary preparations" for a "total solution of the Jewish question" in all the territories under German influence, to co-ordinate the participation of all government organisations whose co-operation was required, and to submit a "comprehensive draft" of a plan for the "final solution of the Jewish question".[46] Goring was at this time the second most important Nazi in the German government. On January 20, 1942, a meeting of German high officials was held in the suburb of Wannsee on the outskirts of Berlin. Heydrich presided over the meeting to take the final solution the Jewish question to the point of administrative implementation. It should be noted that the meeting was attended by the second tier of Nazi leadership. The top guns, which included Hitler, Goring, Himmler, Goebels, Rosenberg and others, were not there. There is evidence that the step to the decision to create and implement a final solution to the Jewish question was enhanced because of Hitler's military successes.

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[44] Betts, P. *Within Walls: Private Life in the German Democratic Republic* (2010); Koehler, J.O. *Stasi: the untold story of the East German secret police* (2000) - Following reunification, Gauck was appointed by the Bonn government as its special representative for safeguarding and maintaining the Stasi archives. "We must at least establish a legal basis for finding the culprits in our files," Gauck told me. "But it will not be easy. If you stood the millions of files upright in one line, they would stretch for 202 kilometers [about 121 miles]. In those files you can find an unbelievable number of Stasi victims and their tormentors."

[45] Weyrauch, W.O. *Gestapo Informants: Facts and Theory of Undercover Operations*, 24 Colum. J. Transnat'l L. 553 (1985-1986); The leading study on the confidential informant in Nazi Germany.

[46] Browning, *The Origins of the Final Solution*, 315.

On 16 July 1941, Hitler addressed a meeting of ministers, including Reichsmarschall Hermann Göring, at which the administration of the occupied Soviet territories was discussed. He said that Soviet territories west of the Urals were to become a "German Garden of Eden", and that "naturally this vast area must be pacified as quickly as possible; this will happen best by shooting anyone who even looks sideways at us."[47] There is in-clarity about the specific order to launch the final solution. However, circumstantial evidence suggests that it was delivered as a Führerbefehl. This order was an oral order from the Führer having the highest status of Law.[48] The policies and practices set in motion which led to the creation of death camps and industrialized murder clearly required anti–Semitism as a necessary condition for the identification of the target victim. However, anti-Semitism was not a sufficient condition for the Holocaust. More was required. And this meant a decision system of organized repression, and intimidation of unprecedented scale that permitted the institutions facilitating the Holocaust to take effect. In short, the Nazis created a powerful decision apparatus whose objective was mass murder on an industrial scale. The critical question is this: If this is an accurate representation of how the Holocaust happened, what lessons can we learn to ensure that it is not repeated? In addition and apart from the uniqueness of Jewish victimization we have witnessed many episodes of genocide and mass murder during the post War period. Thus, the Holocaust experience provides us with the tools to better understand what creates the impulse to commit Genocide and the decision processes which generated the practical application of this impulse. And this generates the challenge: What strategic initiatives may be developed to eliminate to constrain the genocidal impulse, and what strategies and tactics must be developed at all levels of social organization to prevent it from happening again? Below is a diagram representing in geometric terms the statistical reality of extermination which is the end product of the Holocaust process.

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[47] Christopher R. Browning, *The Origins of the Final Solution* (University of Nebraska Press 2004), 309. The quotations are from Martin Bormann's minutes of the meeting, which were presented in evidence at the Nuremberg Trials.

[48] Longerich, P. *The unwritten order: Hitler's role in the final solution*, (2006) - The Holocaust differs from other genocides in recent history for one main reason—there is no other example in which a minority was annihilated so systematically on the orders of a head of state and through the apparatus of government. Through the recent discovery of documents, the central role that Hitler played in the persecution and murder of the European Jews can be proved much more conclusively than was possible just a few years ago.

Table 3: Holocaust Deaths[49]
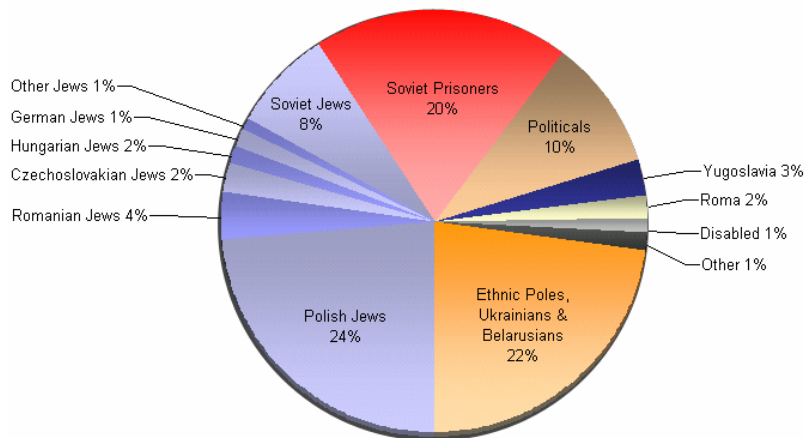
B. SPECIFIC LESSONS WHICH MAKE THE HOLOCAUST UNIQUELY DISTINCTIVE

1.   One of the most important factors which shape the thinking about the Holocaust is that it appears to be the climax of a very long and protracted endurance of the phenomenon known as Semitism. Anti-Semitism is more than mere racial discrimination, and more than racial prejudice. By itself anti-Semitism is a process that seeks to dominate and subjugate an out-group. In this sense it is more lethal than generalized discriminatory practices against out-groups. Central to the outcome of the Holocaust is the idea that anti-Semitism is a necessary, but not sufficient condition of the Holocaust. The table below provides a statistically indication of Nazi killings that reach beyond the Holocaust.

Table 4: Nazi Democide Rates[50]

NATION/REGION	DEMOCIDE RATES % [1] OVERALL	ANNUAL	ODDS OF DYING [4]
Germany	1.08	0.08	1 in 93
Occupied Europe	6.50	1.08	1 in 15
Overall	5.46	0.91	1 in 18
Nine Chronic Diseases [2]	2.56 [3]		1 in 39

1. Democide rates are from appendix Table A. Overall is calculated as (democide/population) X 100. Annual is : (overall rate)/(6 years); for Germany the division is by 12.42 years.

2. Diseases are stroke, heart disease, diabetics, chronic obstructive lung disease, lung cancer, breast cancer, cervical cancer, colorectal cancer, liver disease.

3. Rate is 426 per 100,000 for U.S. in 1986; multiplied by 6 for comparability to above overall rates that are for six years.

4. Based on the overall rate.

2.   As a necessary condition of the Holocaust it is appropriate that we consider two important issues; first, if it is a necessary condition of the Holocaust, then the psycho-social process which serves to identify culturally and politically the target out-group, using anti-Semitism as a marker for the potential victim requires that the symbolization of otherness in the psychosocial biography of the community has to be frontally undermined. That would ensure that the essential condition of a holocaust-like outcome cannot happen. The second

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[50] *Table 1.2: Nazi Democide Rates*, in

point in this regard is that anti-Semitism has been an astonishingly durable symbol with a long historical pedigree. It is impossible to know precisely why it had such historical traction. It is possible that its roots in the dark ages are simply a reflection of widespread cultural ignorance because the out-group itself socialized to reading, writing, counting and a sophisticated cultural inheritance represented a form of success denied the vast masses of European culture during the dark ages. The marginalization of the Jewish community as an out-group permitted it to survive economically on the margins of the static economies, and after feudalism that role which involved finance credit, debt and exchange, once again provided a degree of unpopularity which could target the Jewish minority as outsiders. Hence, survival successes of the Jewish minority could be used to scapegoat that community. Finally, the traction of anti-Semitism may lie with its validation by religion and scholarship. Thus, these perspectives are a powerful combination to reinforce and validate emotionalized negative sentiment which targets a minority. Below are two tables that provides a statistical comparison of the comparative death toll, which Professor Rummel labels democide.

Table 5: Comparison of Nazi Democide to That of Other Regimes[51]

| GOVERNMENT | POPULATION | PERIOD | DEMOCIDE [1] | | ODDS OF |
			KILLED	RATE [5]	DYING [6]
Soviet Union	cit./for. [2]	1917–87	61,911	.45	1 in 222
Communist China	citizens	1949–87	35,236	.12	1 in 833
Nazi Europe	*Europe [3]*	*1939–45*	*20,946*	*1.08*	*1 in 93*
Nationalist China	citizens	1929–49	10,214	.29	1 in 345
Japanese Militarists	Asia [4]	1937–45	5,890	.99	1 in 101
Nazi Germany	*citizens*	*1933–45*	*762*	*.08*	*1 in 1,235*

1. Figures from Tables 1 and 2 for Nazis. From Rummel (1990) for the Soviets; Rummel (1991) for the Chinese; Rummel (1993) for the Japanese Militarists. Governments rank ordered by their democide.
2. Citizens and foreigners.
3. Occupied Europe, excluding Germany.
4. Occupied Asia, excluding Japan.
5. Percentage annual rate. Soviet rate for citizens only.
6. Calculated using the annual democide rate: 1 in (100/(% annual rate)).

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[51] *Table 1.3: Comparison of Nazi Democide to That of Other Regimes*,

Table 6: Nazi Democide Compare to that of Others[52]
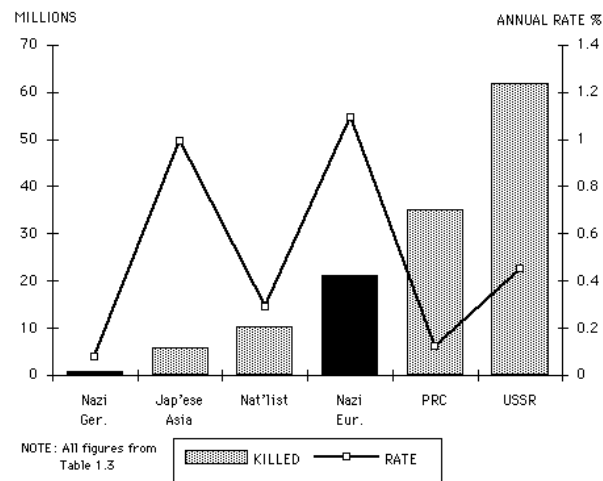
3. When we come to the transformation of anti-Semitism to the perspectives and practices of the policies of deliberate extermination, we need a better explanation of how this happened. In short, anti-Semitism may be a necessary condition of the Holocaust, but it may not be sufficient. We would suggest that the very decision to order a final solution, which is a major step from the repression of anti-Semitic law, must lie with the psychopathology of the leadership of the Nazi elite. At the apex of this elite was Adolf Hitler, the prime pathological suspect. Additionally, such a decision could only happen in a political context which the unthinkable idea could be expressed as secret policy and could not be internally or externally challenged. In short, the totalitarian or authoritarian State provides a perfect structure to secure such an unthinkable policy and to secure it in practice. The State in such a situation had to succeed in either destroying or marginalizing political competition which otherwise would require an accounting. The totalitarian State could further cement its insulation from accountability by its own population by an absolutely astonishing degree of social control over the population. This was put into effect by the confidential informer system, a system that ensured that not a squeak would emerge from society.[53] Finally, there is the administrative class, who would not question the policy directives of the leadership but who brought tremendous skills in terms of administrative, logistical, and technological efficiency. This process was a critical factor in the efficacy with which the final solution was implemented on an industrial scale, with the objective of unprecedented and unheard of mass murder. The administrative efficacy and skill culminates in the construction of death camps and crematoria. The system of camps created by the Nazis for controlling, dominating, exploiting and exterminating target populations and political enemies had its culmination point at the end of the transportation system which took the victims to diverse camps which specialized in diverse methods of inflicting cruelty, exploitation and ultimate disposal of the victims. The illustrations below provide a

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[52] *Figure 1.2: Nazi Democide Compare to that of Others*, in

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pictorial view of major institutions which the Nazis developed to specialize in the processes of domination, repression, exploitation, experimentation and industrial murder.

Figure 5: Auschwitz-Birkenau Concentration Camp [54]

Figure 6: Jasenovac Concentration Camp[55]

Figure 7: Bergen-Belsen Concentration Camp[56]

Figure 8: Dachau Concentration Camp[57]

C. THE INTELLECTUAL AND POLICY CHALLENGES OF THE LESSONS

This background provides many scholastic and intellectual challenges, including the idea that the development of insights into these challenges should also be reflected in a concern for the social consequences and policy implications of the generation of such knowledge. From this perspective genocide, including the version represented in the Holocaust, constitutes a problem of global magnitude. Moreover, one of the most critical legal developments in that the global response to genocide has been the Convention that seeks to globally outlaw genocide. The problem with the Convention, in part, is that its

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[54] *Auschwitz-Birkenau Concentration Camp, Poland*; It was an extermination and labor camp. It was used from Apr 1940 – Jan 1945. By August 1944 it was estimated to have approximately 135,000 prisoners; approximately 1,100,000 prisoners out of the approximately 4,000,000 prisoners were killed.

[55] *Jasenovac Concentration Camp, Croatia*; It was an extermination camp for Jews, Serbs and Roma. It was in used from 1941-1944 and it was the main of four camps; Stara Gradiška concentration camp, the Sisak children's concentration camp and Donja Gradina. It held approximately 100,000 deaths.

[56] *Bergen-Belsen Concentration Camp, Germany*; It was a collection point that worked from Apr 1943 –
Apr 1945. It is estimated that it held approximately 70,000 dead prisoners.

[57] *Dachau Concentration Camp, Germany; Prisoners cremating other prisoners.* Dachau was a labor camp. It was in used from Mar 1933 – Apr 1945. It is estimated that it held 200,000 prisoners from where approximately 31,591 were killed.

identifiable protected groups leave out a large segment of the human community who experience mass murder in which the symbols of identity which are a necessary predicate for mass murder are not accounted for. In any event, the central insight of the Genocide Convention is that its definition of the protected class is dependent upon some interior symbol of identity which is a necessary but not sufficient condition of genocide or mass murder. It is for this reason that scholars such as Rummel proposed the concept of *democide* to fill the gap left by the Genocide Convention.[58]

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

International Law also proscribes racial discrimination.[59] Racial discrimination cannot happen without the boundaries of the "non-we", and the symbols of supporting negative sentiment. However, anti-Semitism and racial prejudice are simply more potent versions of the targeting of the victims with the symbols and practices of negative sentiment. International Law has also sought to make apartheid a crime against humanity.[60] Apartheid functioned explicitly on the demarcation of human communities according to the symbols of race and ethnicity. It therefore, had much in common with anti-Semitism and racial discrimination. What distinguished apartheid was that apart from the symbolic and legislative identification for the ascription of human group identity, it sought to impose, as a consequence of these classifications, a system of indefinite domination and subjugation. In this sense apartheid in theory and practice was one of the most virile and aggressive forms of racism.

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

[59] *The International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD) - entered into force on January 4, 1969

[60] *International Convention on the Suppression and Punishment of the Crime of Apartheid*, G.A. res. 3068 (XXVIII)), 28 U.N. GAOR Supp. (No. 30) at 75, U.N. Doc. A/9030 (1974), 1015 U.N.T.S. 243, entered into force July 18, 1976.

IV.   UNDERSTANDING EMOTION AS A DRIVER OF HUMAN VALUE

Since the foundations that connect the human person to the sense of the "I", the "we" and correspondingly the "other" is one of our important considerations for minimizing the occasion of the predisposition to genocide, it is important to consider many of our innocuous practices within family structures that might inadvertently reproduce the personality type whose lingering insecurities from childhood rearing and the family practices predispose the person to the development of a more closed or authoritarian frame of reference for the essential pattern of identity. This suggests that there needs to be a greater degree of community involvement in educating families, and especially mothers, about relatively innocuous patterns of child nurturing and rearing, in the hope that the society will diminish the reproduction of closed personality types and perhaps maximize the reproduction of open, democratically inclined personality types. For example, children have a completely different sense of time from the adult, and imposition of an adult's sense of time might constitute a deprivation with lasting effects on the development of the child's personality.[61]

It may also be that in general societies take for granted the importance of emotion and sentiment in the construction of future generations. Here intellectually the idea of affect or positive emotional sentiment may need to be more explicitly recognized as an important cultural and policy preference. In short, emotion and sentiment permeate all human behavior. Emotion and sentiment may be the driving force about what is right concerning the human prospect and what is required to avoid was wrong with it. Modern scholarship has drawn attention to the importance of the emotions encapsulated in positive and negative emotion.[62] We provide a provisional overview of positive and negative sentiment. Indeed what we suggest is that genocide is impossible when culture, law, and politics give due deference to the principles of positive sentiment or affect and heightens the prospect of genocide and atrocity when the negative symbols of emotionalized hate are dominant. Perhaps the important insight here is that positive sentiment is a critical foundation for the culture of human rights. Negative sentiment is critical for the denial of the cultural of human rights.

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

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[61] Goldstein, J., Freud, A. & Solnit, A.J. *Beyond the Best Interests of the Child*, Volume 1 (1979)

[62] Moïsi, D. *The Geo-Politics of Emotion: How Cultures of Fear, Humiliation and Hope are Reshaping the World*, Anchor Books, New York (2009)

Table 7: What is Emotion[63]

The French scholar Dominique Moïsi in his powerful new book, *The Geopolitics of Emotion*, has sought to reinvigorate the salience of emotion within the framework of worls politics and global security.[64] According to Moïsi global society generates emotional outcomes characterized by fear, humiliation and hope.[65] An improvement of the conditions of peace and human well being on a global basis lies in maximizing hope and reducing the emotions of fear and humiliation. According to Moïsi, "the mapping of emotions will become as legitimate and compulsory an exercise as the mapping of geographical realities".[66] Indeed, he develops a global map of the three above mentioned key emotions with the keen insight into understanding the "other" and correspondingly the "we" or the "us" in terms of the generation of emotions that either promotes conflict or solidarity. It would be of value to focus on the key work of Harold Lasswell who bravely explored the importance of the human personality and its emotional capacities as a driving force of political behavior. Lasswell was deeply influenced by Freud's work. Freud provided deep insights into human subjectivity, which permitted a creative social scientist to begin to explore the broader implications of the insights into personality and their effects on social process at all levels.[67] Lasswell's early and precautious book explored a theme unheard off in the study of governance. The theme built on the idea that if society reproduced personalities with psychopathological deficits and if such personalities were in positions of leadership in society how would the displacement of psychopathological emotions impact on the fundamental values of the society. This required Lasswell to provide a nuance meaning to the concept of personality as developed by Freud. Lasswell explained his working understanding of the idea of personality as follows:

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[63] What Is Emotion?, M.P. Gonzalex, E. Barrull, C. Pons and P. Marteles, 1998,
http://www.biopsychology.org/bispsychology/papers/what_is_emotion.htm
[64] Moïsi, D. *The Geo-Politics of Emotion: How Cultures of Fear, Humiliation and Hope are Reshaping the World*, Anchor Books, New York (2009)
[65] *Id.*
[66] Moïsi, D., *How cultures of fear, humiliation and hope are reshaping the world*,
[67]

"By personality is meant the general orientation of the individual toward his environment. Through any period of time the structure of a personality may be classified according to the inter-act channels. Hence we may distinguish the sum total of impulse channels as the <u>id</u>…, the impulse-resistance channels as the <u>superego</u>, and the subjectivity and expression channels as the <u>ego</u>. The portion of the id which is suppressed, repressed, and resisted, together with the superego, are <u>unconscious</u>."[68]

Lasswell's references to impulses are reference to the drives and the directions of emotionalized behavior. These drives, or impulses, are matters of human emotion. As such, these drives may be expressed in Lasswell's nuance interpretation of Freud as the individual's self-system which comprises of identifications, demands and expectations. Each of these aspects of personality will generate particular impulses or emotions. For example identification is the individual's conception of the "I" or the "me", as well as secondary symbols which included in the system of identification involves family, friends, neighbors, nation, and even global solidarity. Demands reflect emotions that are experienced directly such as love and hate, like and dislike, and the strong emotions of incitement or moderation of the relationship from the "self" to the "not-self". Expectations bringing assumptions about the constrains or directions of human motivation generated from the past, the present and the future regardless of the likes or dislikes of the individual self-system, or indeed the boundaries drawn by the self-system. The self-system is also influenced by drives and motives generated by the unconscious.

We see here that Lasswell has developed the insights of Freud in a way that provides useable concepts for observation and study of the interrelationship between personality and culture. His key insight in the exploration of psychopathology and politics was that a psychopathological emotion of a leader may constitute a threat to the public order. Hence, there was importance in the identification of the psychopathology of leaders and an urgent task of developing the idea of preventive politics. It was later to see that preventive politics was strategically an important component of the legal process and the rule of law. Another insight which was precautious and far reaching was Lasswell's idea of identifying and explaining the importance of the political man who is shaped by the emotional aspect of personality. Lasswell emerged with a famous formula to describe this; p} d} r = P. In the formula 'p' stands for private motives; 'd' stands for displacement onto a public object; and 'r' for the rationalization in terms of the public interest. This formula of the political man is crucial to our understanding of the political man mobilizing his emotional deficits to compensate for his emotional deprivation in order to acquire power and thus we have an insight into the personality type attracted to power, the attraction of which reposes in his emotional orientation. From the idea of a power centered personality conditioned by emotional drives to acquire and exercise power Lasswell also speculated on the idea of a personality type suited to democratic political culture, the democratic personality. This also raised an important technical question of meaning and communication and its impact on human subjectivity.

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[68] Lasswell, H., *Power and Personality*, p. 39

The central insight here is that emotions are frequently triggered by symbols from the environment. Hence, the symbolic language of politics will carry a greater meaning in shaping emotionalized political behavior than mere literalism. This is an important insight in attempting to understand the enormous role of Nazi symbolic propaganda and its monopoly over the means of communication in Nazi Germany in generating emotions for ethnic Germans which sought to eliminate the widespread feelings of despair and failure as the loosing nation in the Great War. Similarly the Nazis were able to use powerful propaganda symbols to demonize the enemy within and to blame the enemy for the defeat of the nation in the Great War. Its powerful symbols also sought to diminish the idea that Jewish Germans were human beings. Lasswell also speculated about many other types of political personality. For example, he provided an insightful description of three types of political personality: agitator, administrators and theorists. The agitator is political force that seeks to elicit powerful emotional responses from the public. What drives the agitator is a deep case of narcissism. Hitler was a prime agitator. The administrative type is a coordinator of continuous activity. Nazi Germany had a powerful cadre of administrator types and at the Wannsee Conference it was not the agitator leadership but the efficient and awfully deadly administrators who set emotion the industrialization of mass murder.

Other experts in psychoanalysis have developed frameworks for understanding the authoritarian personality,[69] and the psychoanalyst Wilhelm Reich wrote a book that provided a deeper explanation of the mass psychology of fascism. Reich explains the importance of emotion to fascism: "fascism" is the basic emotional attitude of man in authoritarian society, with its machine civilization and its mechanistic-mystical view of life." [70] Reich also clarifies the important role of the family in shaping the emotional orientation of the participants within it. Chapter V of his piece contains the famous statement that the family is the first cell of the fascist society;

> "From the standpoint of social development, the family cannot be considered the basis of the authoritarian state, only as one of the most important institutions which support it. It is, however, its central reactionary germ cell, the most important place of reproduction of the reactionary and conservative individual. Being itself caused by the authoritarian system, the family becomes the most important institution for its conservation. In this connection, the findings of Morgan and of Engels are still entirely correct.[71]

Finally, it would be appropriate in the light of Professor Moïsi's mapping of various forms of emotion onto the discourse of international relations that we also make reference to one of Harold Lasswell's most imaginative and important studies: *World Politics and Personal Insecurity*. This was a study that made the individual together with his emotionalized orientation a central player in the world of world politics. Such a connection had not been made before and many conventional theorists were bewildered by the

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[69] Adorno, T. W., Frenkel-Brunswik, E., Levinson, D.J., Sanford, R.N. (1950). The authoritarian personality. Norton: NY; See also Robert William Lundin, *Alfred Adler's basic concepts and implications*, Taylor & Francis, 1989
[70] Wilhem Reich, *The Mass Psychology of Fascism* (1933)
[71] *Id.*

connection of the individuals' anxieties and emotions to events that are distant but nonetheless represented as powerful symbols for reinforcing individual anxiety and insecurity. It seems that Professor Moïsi has therefore made an important contribution in modernizing and reinvigorating the ideas at the back of emotionalized sentiment which have profound effects on peace, security and world order. In the next section we draw attention to the developments in a completely unrelated field but which underscores the importance of emotion as an aspect of human consciousness in influencing the behavioral particles in the sub-atomic world.

The character of the human personality will have an influence on the nature of the form of governance. An authoritarian State will concentrate power in a narrow power elite, and will cultivate psychological orientations in the population which is socialized to acceptance of orders from above and to impose them ruthlessly on those below them in the hierarchy of order. A totalitarian State would simply be reflected in the dominance within the elite of a major power personality, the dictator. In these societies authority and control are not limited by countervailing elements of political competition. The opposition is either wiped out or effectively repressed. In such a circumstance, the constraints about major political decisions, such as the commitment to war and the use of extreme violence does not have the restraints of political accountability of a normal rule of law governed democracy. This suggests that the restraints on war making in an authoritarian or totalitarian State are diminished while these restraints are an important factor in constraining decision making in a democracy. There is some truth in the idea that an effective democracy is also an effective institution for sustaining peace. On the other hand an authoritarian or totalitarian State is a State that is more partial to violent conflict and war because such decisions may be made with little restraint. The diagram below illustrates the connection between democide and the form of governance in the State.
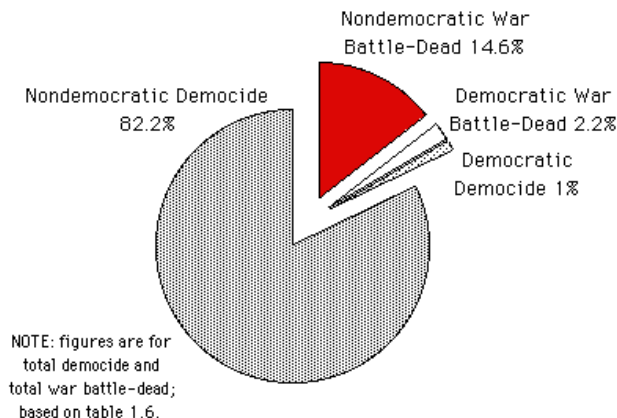
Table 8: Democide and Power[72]

SOURCE/REGIME [1]	REGIME POWER	KILLED (000) [2]			RATE % [3]	
		TOTAL	DOMESTIC	FOREIGN	OVERALL	ANNUAL
DEMOCIDE						
Democratic	LEAST	2,016	158	1,858	0.04	0.01
Authoritarian	MID	28,691	25,730	2,961	1.06	0.21
Totalitarian	HIGH	137,977	103,194	34,783	4.15	0.40
Communist	HIGHEST	110,281	101,923	8,357	5.35	0.52
Others [4]		514	826	-324		
WORLD		169,198	129,908	39,278	7.28 [5]	0.083 [5]
WAR		TOTAL	DOMESTIC	INTER'L	PER WAR [6]	% POP. [7]
Democratic	LEAST	4,370	5	4,365	62	0.24
Authoritarian	MID	15,298	4,774	10,523	86	0.33
Totalitarian	HIGH	14,354	68	14,286	399	0.64
Communist	HIGHEST	9,784	68	9,715	326	0.53
WORLD		34,021	4,848	29,174	120	1.46 [8]
WORLD TOTAL		203,219	134,756	68,452		8.74 [9]

1. These are regimes in states, quasi-states, and non-state groups. Classification of regimes based on Small and Singer (1976) and Ted Rober Gurr's Polity I data.
2. Figures for democide are the sum of most probable mid-values in a low-high range 1900-87. Figures for war are a regime's battle-dead over 1,000 for 1900-80, based on Small and Singer (1982), modified by additional data in this book. Figures may not add up due to round off.
3. "Overall" is the average for regimes of their percent of mid-period populatin killed in democide. "Annual" is this average for the percent of the population killed per year.
4. These are groups for which a regime could not be specified, such as international terrorists and domestic guerrilas.
5. The world rate is calculated for the 1944 global population.
6. Average regime's battle-dead per foreign war in thousands.
7. Average percent of a regime's population killed in international wars.
8. Percent of the world's 1944 population killed in all wars 1900-1980. The annual percentage is .018.
9. Percent of the world's 1944 population killed in democide 1900-1987 and wars 1900-1980.

The table below provides a statistical summation of the figures the previous diagram. The configuration illustrates the death toll and therefore the human cost of war as a matter that is tied to democratic versus nondemocratic forms of governance.

Table 9: Democide v. War Battle-Dead; Democracies v. Nondemocracies[73]

Nondemocratic War Battle-Dead 14.6%
Nondemocratic Democide 82.2%
Democratic War Battle-Dead 2.2%
Democratic Democide 1%
NOTE: figures are for total democide and total war battle-dead; based on table 1.6.

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[72] *Table 1.6: Democide and Power*, in Murder by Government by Rummel, R.J. (1994)
[73] *Figure 1.8: Democide versus War Battle-Dead; Democracies versus Nondemocracies (Based on Table 1.6)*, in Murder by Government by Rummel, R.J. (1994)

A. EMOTION, CONSCIOUSNESS AND MODERN SCIENCE

Emotion has been largely a field monopolized by the psychological sciences. It has been in a very important way a field dominated by the religion. Today this sharp division has been eroded as the field of quantum mechanics has disclosed properties and insights of micro-particles and waves. The experiments in quantum physics and these experiments confirm results that are sometimes described as weird. The results do not make sense in the world of cause and effect as objectively observed. One of the insights of quantum physics is the role of the observer in shaping the behavior of the particles observed. This has raised the question that human consciousness when focus on the particles has an influence on how the particles behave. In short, observational consciousness appears to be a form of participatory interaction. It has been shown experimentally the cells of the body and the DNA communicate through this subtle field of energy that is difficult to quantify or measure. More than that it is been shown that human emotion has a direct influence on living DNA. These effects eliminate the interposition of distance between these objects. According to the physicist Amit Goswmai, "when we understand us, our consciousness, we also understand the universe and separation disappear." The scientific results from quantum physics experiments indicate that the human DNA has an effect on the particles that constitute the matter of the universe. It is also established that human emotion has an effect on DNA which in turn affects the particles the world is made of. Additionally, the connection between emotion and DNA has effects which transcend space and time. Scientists now believe that there is in space a matrix of energy that connects anyone thing with everything in the universe. This connected field accounts for the unexpected results of experiments. It is further believed that the DNA of the human body gives us access to the energy that connects with the universe. Emotion is the key for the tapping into this field. According to the famous quantum physicist Max Planck "As a man who has devoted his whole life to the most clear-headed science, to the study of matter, I can tell you as a result of my research about the atoms this much: There is no matter as such! All matter originates and exists only by virtue of a force which brings the particles of an atom to vibration and holds this most minute solar system of the atom together… We must assume behind this force the existence of a conscious and intelligent Mind. This Mind is the matrix of all matter." (Cited in Gregg Braden's Book pp. 216)

The central insight of modern physics is that we live in a participatory universe. Human consciousness, it is believed, participates in this universe via human emotions and represents a profound insight and even deeper challenge to the age old question of the being and becoming of humanity. This participatory universe generates the future of multiple possibilities which gives strength and responsibility to the idea of creative orientation. Which of the possibilities may emerge as real would therefore appear to be influenced by emotion filter through consciousness and observation. In short, there is more to the idea of a focus of attention. A focus of attention generates the enemy of human consciousness which may create a possible future reality. Scientists still dispute the precise meaning of the nature of possibilities and overlapping possibilities. Three of the most important of these interpretations is the Copenhagen. Theorists here focus on experiments which

indicate that a person observing an electron moving through a slit in a barrier suggests that observation itself is what turns quantum possibilities into reality. Second there is the many worlds interpretation. This interpretation is similar to Copenhagen but suggests that the possibilities are infinite and all of them exist simultaneously. However, in the "many worlds" view each possibility happens in its own space and cannot be seen by others. These unique spaces are called alternate universes. Finally, there is the Penrose interpretation. Here Penrose maintains the belief of many possibilities existing at the quantum level. However, his theory is distinctive as to what it actually is that "locks" into a particular possibility that becomes our reality. Penrose recognizes that each possibility has its own gravitational field. It takes energy to maintain this field and the more energy a probability requires the more unstable it is. The consequence was that without enough energy to sustain all possibilities they collapse into a single state which represents our reality.

The conclusions that are drawn from the insight of quantum possibilities are that emotion as a part of consciousness is the central factor in the choice of reality. From this point of view it is the language of human emotion that speaks to the quantum forces of the universe and to Planck's intelligent matrix. The polar extremities of feeling and emotion, which may feed into human consciousness, are the extremes of love and hate. Thus, the greatest challenge presented in the world of quantum physics and human consciousness has a similarity to the challenges posed by great religious and mystical insights. For example, Central to love is the idea of compassion, empathy and positive sentiment which we describe later as "affection". Positive sentiment in the form of compassion is according to the Buddhist tradition the feeling of "what connects all things". And compassion in this tradition is both a force of creation and an experience. In short, science and mystical experience seem to converge on the importance of positive sentiment for personal growth and transformation with large scale existential implications. In short, it is love, compassion, and empathy that we must embody in our lives and feelings as the way we chose to experience the world. On the other hand, there is the inevitability of choice in the orientation of emotion and feeling. Such choices may well reflect the framework of the pole of hate which is reflected in the existential fears human experience in terms of abandonment, low self worth, and lack of trust. The negative sentiment would be the feature for the creation of a negative utopia and the ultimate expression in reality of a negative utopia would be the practices and policies for the extermination of human aggregates.

B. THE SOCIAL PROCESS OF POSITIVE SENTIMENT

The social process also generates the identifiable markers of a social process of positive sentiment. Part of positive sentiment maximizes within the personality of the individual self system the salience of affection, empathy and solidarity with humanity as a whole. As such it is a process that is very fundamental to social organization that seeks to universalize the dignity of man. As such, a social process of positive sentiment is an antidote to anti-Semitism, to racial discrimination, to prejudice, to group domination and to group extinction. Since the social process of positive sentiment like negative sentiment is a

form of emotion and a driver of human behavior it is an important addendum to understanding the social processes that generate forms of social pathology such anti-Semitism and Holocaust like the outcomes of behavior.

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

Table 10: The Social Process of Positive Sentiment (Affection): The Relevant Analytical Markers

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

	sentiment.
Social Reinforcement through Positive Feedback Mechanisms	Reproducing the cycle of positive sentiment is critical to the culture of human rights and its sustainability on a global basis. Thus, the micro-social units (affection units) ostensibly specialized to positive sentiment or love and affection are critical for a healthy and normal society that does not institutionalize compulsive, neurotic or psycho-pathological outcomes. In short, a psycho-political culture of positive sentiment reproduces in effect the social and political foundations of the culture of human rights. Perhaps even more than that, it is giving to those committed to the love of God, the religious redemption of the love ideal through human rights.

C. THE SOCIAL PROCESS OF NEGATIVE SENTIMENT

It will be obvious that the social process of negative sentiment is applicable to human aggregates who are not Jewish. We therefore must use the model in a more discriminating way to uncover the unique, distinctiveness of anti-Semitism as an outcome of the social processes of negative sentiment. To engage in this exercise multiple disciplinary vantage points and insights may be necessary in order to understand the unique and distinctive character of anti-Semitism.

Table 11: The Social Process of Negative Sentiment (Hate): The Relevant Analytical Markers

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

Alliance and Allegiance	The system of generalized group deprivations, thus, involves distinctive, and often, discrete pattern of communication of relevant signs and symbols of the "in-group" loyalty and solidarity, as well as signs and symbols that identify, disparage, or threaten members of the "out-group." The patterns of communication are sustained or enhanced by collaborative operations in the exercise of public or private power that move beyond discrimination, anti-Semitism, prejudice or hate to the possibilities of wholesale extinction of cultures and masses of human beings.
Nurtured Predispositions	Human beings conditioned to generate negative sentiment as a normal aspect of the predisposition of personality invariably create environments in which micro-social relations reflect the normative priority given to the reproduction of negative sentiment. Thus, innocent child rearing and nurturing practices although covered in an ostensible mantle of love may be in fact impact on personality development so that the person that emerges is ill suited to a democratic political culture. On the contrary, the person that emerges is ill suited to a democratic political culture. On the contrary, the person may be raised in a climate in which repression and fear unwittingly reproduce insecurity and intolerance of others. As such personality types mature, they exhibit the partiality to authoritarianism and domination. They reproduce the cycle of negative sentiment. Therefore, the micro-social units ostensibly specialized to positive sentiment or love and affection may actually be specialized to doing the opposite. In short, such psychopathological political culture may be reproducing the "Anti-Christ of human rights."
Halting the Cycle of Social Reinforcement by Derailing Negative Feedback Mechanisms	Breaking the cycle of negative sentiment is critical to the culture of human rights and its sustainability on a global basis.

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

In a survey map provided by the Associated Press, mass killings, which are essentially the outcomes of the problems of "otherness," cultural dominance, and conflict in the 20th Century, provide a staggering specter of genocide.[74] As far back as 1904 and 1907,

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[74] Levinson, A. *For This Century's Homicide Regimes, Genocide is a Snap*, The Gainesville Sun (from the Associated Press), 1G, 4G (September 24, 1995), especially the map (Mass Killings of the 20th Century).

German colonial conquests of Southwest Africa resulted in the killings of 100,000 Hereros.[75] Similarly in 1972, 80,000 people out of the approximately 130,000 people that were killed in Burundi were Hutus.[76] In Ethiopia between 1983 and 1984, one million people perished.[77] In Iraq during 1915 and 1918, 1.5 million Armenians were killed.[78] Between 1939 and 1945, the Nazis killed approximately 11 million people which include 6 million victims of the Holocaust.[79] In 1992, it is estimated that one million Muslims were killed in Bosnia.[80] In 1965 and 1966, between 500,000 and one million people were killed in Indonesia.[81] It is estimated that between 60 million and 100 million people died under Communist rule in China, beginning in 1949.[82] In Latin America between 1980 and 1984, in the state of Guatemala, at least 100,000 people were killed.[83]

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

V. RECURRENT GENOCIDE: THE CASE OF THE FORMER YUGOSLAVIA

The war in the former Yugoslavia continued remorselessly for years. There was great uncertainty about the nature of the conflict as well as concern about the quality and effectiveness of international concern and intervention. Early on there were sharp questions about the policy implications of intervention or non-intervention that included the continuum of politico-juridical responses that ranged from a vast array of modalities of persuasion and coercion. "Unpacking" this war was no means undertaking. Our response mirrors that of many scholars who have seen it as the height of civic responsibility to attempt such an undertaking. Lawyers have also sought to use their craft to bring a deeper and clearer understanding of the problem by which we can appreciate the potentials and limitations inherent in the "international Rule of Law." A disturbing view presented at this time was that this conflict did not necessarily test the possibility of a rule of law as "traditionally" understood, but rather presented an even greater concern: the possibility of

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[75] Sarkin-Hughes, J. *Colonial Genocide and Reparations Claims in the 21st Century: The Socio-Legal Context of Claims under International Law by the Herero against Germany for Genocide in Namibia, 1904-1908* (PSI Reports) (2008)

[76] Stokes, J. *Encyclopedia of the Peoples of Africa and the Middle East: Volume 1*, Page 300 (2009)

[77] Webb, P., Von Braun, J. & Yohannes, Y., *Famine in Ethiopia: policy implications of coping failure at National and Household Level*, Page 27 (1992)

[78] Ember, M., Ember, C.R. & Skoggard, I. *Encyclopedia of diasporas: immigrant and refugee cultures around the World: Volume 2*, Page 43 (2005)

[79] Longerich, P. *Holocaust: The Nazi Persecution and Murder of the Jews*, Page 492 (2010)

[80] Burg, S.L. & Shoup, P.S. *The war in Bosnia-Herzegovina: ethnic conflict and international intervention*, Page 179 (2000)

[81] Nilsson Hoadley, A. *Indonesian literature vs New Order orthodoxy: the aftermath of 1965-1966*, Page 53 (2005)

[82] Angle, S.C. & Svensson, M. *The Chinese human rights reader: documents and commentary, 1900-2000*, Page 361 (2001)

[83] Higonnet, E. *Quiet genocide: Guatemala 1981-1983*, Page 61 (2008)

an alternative normative framework for world order. In this sense it has some similarity to Hitler's notion of reconstructing moral order along the lines of herrenvolk racial supremacy. And in particular Hitler's effort to exterminate humanistic thinking and values implicated in the Jewish cultural heritage regarding the right to life.

On our planet there are approximately 132 states with more than one million inhabitants in each, and of these 12 are ethnically homogeneous; in 25, one ethnic group comprises 90% of the population; in another 25, one group comprises about 75% of the people; in 31 states one group is about 50%; and in 39 states no single group accounts for more than half of the population. The ethnic characteristics of the former Yugoslavia are summarized in the accompanying table where Slovenia emerges as the most "homogeneous" of the states. The statistical conclusion is compelling as it is unsettling: the ethnically homogeneous state is exceptional. Any political demand that there must be a dear fit between the identity of the "group" - either ethnic or national - encased in the boundaries of the primary political legal organ of the nation-state presents a claim that provokes the prospect of conflict that may generate all the classic problems of international juridical concern -- threats to peace and security, potential for gross human rights violations, challenges to the principles of humanitarianism and the possibility of mass displacement and forced migration of peoples. To provide a statistical background to the context of the conflict in the former Yugoslavia and the death toll that the conflict came to represent, we reproduce the statistical table of Democide in the Former Yugoslavia from the perspective of recent history.

Table 12: Democide in Yugoslavia[84]

NATION/GROUP	YEARS	DEMOCIDE [1]
Yugoslavian Nation/Groups		
Tito Government	1944-1987	1,072,000
Partisans	1941-1944	100,000
Communists	1941-1987	1,172,000
Chetniks	1941-1945	100,000
Croat Government	1941-1945	655,000
sub-total	1941-1987	1,927,000
Occupying Nations		
Nazis	1941-1945	625,000
Italians	1941-1945	5,000 [2]
Bulgarians	1941-1945	10,000 [2]
Hungarians	1941-1945	78,000
sub-total	1941-1945	718,000
Totals		
Democide	1941-1987	2,645,000
Democide	1941-1945	2,073,000
Battle-dead	1941-1945	555,000

1. Most prudent estimate in a range of low and high estimates. Figures from the table 14A.1.
2. This is a low.

Michael Ignatieff's insights about the war are helpful in focusing our attentions on the central issue of how we are to comprehend the most recent conflict in the former Yugoslavia.[85] He looks at the ongoing war discourse as a form of narrative about "moral engagement" and suggests that in general, "...forms of moral engagement rely on narratives

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[84] *Table 14.1: Democide in Yugoslavia,*
[85] Michael Ingatieff, "Homage to Bosnia," New York Review of Books, April 21,1993, p3-S.

that turn history into a story of rights and wrongs." He argues that the true narrative about the war in Bosnia-Herzegovina has been preempted by a counter narrative which although essentially an untrue exercise, nonetheless has some plausibility and sufficient coherence to provide a convenient level of paralysis, indifference or abstention from the Yugoslav holocaust by the international community. For him, the true story is that Bosnia-Herzegovina is an independent sovereign state being destroyed by force on the part of "insurgents aided by a foreign power." The false story comes under the conceptual baggage of "ethnic conflict." Hidden beneath this veil of ethnicity is a good deal of sloppy analysis, a good deal of skilled interest management, and often, human tragedy in extraordinary measure.

A. WHAT KIND OF WAR WAS THE WAR IN THE FORMER YUGOSLAVIA

Let us start unpacking the baggage of suspect theories about this war by looking more closely at what is meant by "ethnic conflict." Briefly, the word "ethnic" is defined in tautological terms as meaning national identity in this case, and national identity correspondingly means "ethnic" identity. Beyond that the term's meaning becomes either more vague (culturally distinct group) or more opaque (strong subjective feelings of group identity). The word conflict signifies a broad dimension of human behavior whose boundaries begin and end where collaboration starts and ends. Although the term carries a generally negative connotation, it may be simplistically stated that not all conflict is necessarily a bad thing. Now the phrase "ethnic conflict" carries other meanings, other signs and symbolic associations that it seems to have much to do with how we look, think and act regarding the war.

The associations accompanying the war as an example of ethnic conflict also implies that it is a dull war, falling within the domestic jurisdiction of the state, limiting prospects for international concern and responsibility. When this is associated with the concept of "ethnic" more is read into the characterization, and terms like "complexity" and "incomprehensibility" creep in to make the issue obscure, and intervention an unwise option. Other word associations also attend the label ethnic conflict with similar impacts on concern and prospects for constructive action. Thus it is frequently asserted that ethnic conflicts are by their nature "irrational," meaning that "rational" interventions into "irrational" conflicts are doomed to failure. Sometimes the association ties in the notion of ethnic to "age-old" historic enmities between ethnic groups occupying the same territorial arena. Since conditions of such conflict seem rooted in the distant past, they are conflicts that apparently have a level of historic determinism built into them. If an issue is historically determined then the crucial policy issue will question whether rational choice about intervention is possible, or so the logic might go.[86]

The ethnic conflict in the Balkans is also viewed by many as a "non-European" event from the perspective of "western civilization" and this is the code word for "otherness." More

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[86] This is a position taken by George Kennan, "The Balkan Crisis, 1913 and 1993," New York Review of Books, July 15, 1993, where he attributes the sad facts of today to the Turkish domination and other previous interventions, amid the intrusion of "non-European characteristics" which are incongruent with today's realities.

deeply and generally, these ethnocentric words, meanings and associations permit outsiders to separate themselves from the parties involved in such conflicts, either victims or aggressors. We recall a distinguished American international lawyer who commented on another paper of Professor Nagan dealing with the early days of the war, saying, "But Winston, those people have been killing themselves for centuries. You're wasting your time."

Table 13: The Conflict in Former Yugoslavia[87]

Item	Serbia-Montenegro	Croatia	Bosnia-Herzegovina	Slovenia	Macedonia	Total Former Yugoslavia
Population [millions]	9.9	4.5	42	1.9	1.9	22.4
Percent urban	46.8	50.8	36.	49	54	47.3
Area [000 of sq km]	102.3	56.5	51.2	20.1	25.3	255.5
Density [p/ sq km]	97	80	82	75	76	82
Ethnic identification [number][%]						
Serb	[6,237] 63	[540] 12	[1386] 33	[38] 2	[38] 2	[8,239] 40.2
Croat	10	[3,510] 78	[714] 17	[57] 3	0	[4,281] 21.3
Slav-Muslim	1	[45] 1	[1,848] 44	[19] 1	0	[1,912] 9.3
Slovenian	0	[40] 1	0	[1,729] 91	0	[1,769] 8.7
Albanian	[1,386] 14	0	0	0	[380] 20	[1,766] 8.7
Macedonian	0	0	0	0	[1,273] 67	[1,273] 6.2
Montenegrin	6	0	0	0	0	[594] 2.6
Hungarian	[396] 4	[40] 1	0	0	0	[436] 2.0
Turkish	0	0	0	0	[76] 4	[76] 1
Other	0	[360] 8	[168] 6	[57] 3	[133] 7	[738] 3.6
Estimated Religious Identity [%]						
Orthodox	65	11	31	2	59	43
Roman Catholic	4	77	15	94	4	28
Muslim	19	1	44	1	26	19
Protestant	1	1	4	0	1	1
Other or unknown	11	11	6	3	10	9
Primary languages						
Serbo-Croatian	100	96	100	7	3	90
Slovenian	0	0	0	91	0	5
Macedonian	0	0	0	0	0	4
Albanian	0	0	0	0	70	1
other	0	4	0	0	21	1

B. HISTORICAL DETERMINISM AND ETHNOCENTRISM

Such approaches permit one to focus on what one wishes, for example, conflict. To do this, one may indulge in selective remembering in which symbols of group hate and deprivation are prominent and correspondingly develop a kind of collective amnesia about positive, cooperative achievements of human groups. History here is not policy neutral. It may serve a political objective of promoting either harmony or conflict. Thus, one of the basic strategies of the Belgrade elite was to create a narrative that war in the former Yugoslavia was one of historically determined ethnic animosity; a kind of localized, incomprehensible native blood-letting. The position of the Croats and Bosnians was the opposite: that the war was one of aggression organized and implemented by Belgrade and its surrogates.

A second point of skepticism here is that group conflicts as well as group cooperation are ubiquitous elements of all social organization. All forms of social organization evidence social differentiation or stratification which structure the conditions of conflict and cooperation, preconditioning the forms these may take. It has been the classical function of

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[87] [Editor's note] Data are derived from several sources, including the Encyclopedia Britannica, Book of the Year, 1994. The data are of course approximate because of conditions. Nevertheless, one sees that language per se apparently plays little if any role in defining ethnicity in the Serbo-Bosnian-Croatian context. On the other hand, religion appears to be an important ethnic trait as far as the numbers are concerned, but this raises questions as well. The classification, "other" may include persons categories already listed in addition to populations not otherwise distinguished.

governance, law and community concern to control, regulate, mediate, arbitrate and adjudicate particular forms identified as "conflict": murder, assault, rape, aggression, war crimes, genocide and so forth. Indeed, not all forms of conflict are necessarily identified as unacceptable in cross cultural terms. Thus, the right to self defense in both domestic and international legal systems is generally considered to be morally justifiable and juridically appropriate. Moreover, some forms of conflict may, from an anthropological perspective, be played out in harmless rituals, practices and social conventions that both permit and control conflict at the same time.

C. JURIDICAL INSIGHTS INTO UNDERSTANDING THE FORM OF CONFLICT

What is important in unpacking the Yugoslav war is the distinctive perspective legal culture brings to the inquiry. The focus on the "form" of the conflict invariably requires that lawyers look at the issues of responsibility and accountability. This suggests that law provides a certain kind of epistemology to deepening our understanding of the mystery of ethnic conflict. A focus on responsibility and accountability, in effect means that there must be an examination of the chain of decision-making responsibility for so-called "ethnic violence." To put this insight into more practical terms we need to know for the ascription of responsibility and accountability and who ordered the following:

- The use of force against the republics of the former Yugoslavia?
- And implementation of terror tactics and attacks against the armed opposition and especially, the civilians?
- the "ethnic cleansing" (genocide) and the policies defining how it would be carried out, that is, the "tactical" rape, murder, massacre, enforced pregnancy, castration and torture?
- The planning and implementation of the dislocation of people from their homes?
- The planning and implementation of policies to destroy the cultural heritage of the republics?

We would suggest approaching this issue by developing a systemic contextual background outlining the processes of effective power to facilitate the location of the critical points of decision that have shaped the form of conflict we now see. Discovering the power players and actors in these chains of events is crucial to any understanding. It throws little light on the problem to talk about "Croats," "Serbs" or "Bosnians" as homogeneous entities.

D. THE IMPORTANCE OF HUMAN PERSONALITY, EMOTION AND THE SUBJECTIVITIES OF THE PARTICIPANTS

The critical players here were part of the old political and security cadres of Yugoslavia: the party, security establishment, presidency and other agencies of that government. In this framework, the personality of Slobodan Milošević and his supporters emerge, seen in their rise to power and purges of the Serbian Communist party. The critical perspectives of the various actors were crucially influenced by national ideological identifications as well as the views of national versus federal identity. A core feature in this emergent pattern of group identity was the perceived weakening of the Serbian nationality,

the insecurities of which were fueled by the uneven economic and political developments in the more progressive states, the exploitation of insecurity and the revitalization of the "genocide memory" as a mode of justification.

The political demands of the parties involved the crisis of communism (central one party rule versus looser forms of constitutional governance), the claims for multi-party democracy, respect for human rights and the claims for national identity self-determination and federal unity. The particular assertion of a greater Serbian identity which collapsed into communistic ideological symbols, generated greater insecurities about centralized versus decentralized government. The aims of the parties from a strategic and tactical viewpoint may be simply stated. The newly recognized republics wished to protect their territorial integrity and political independence from external subversion and aggression. Their claims for recognition followed well-documented European Union guidelines.

For the purpose of feeding Serbian insecurity in a time of radical change and as a base for the defense of the socialist agenda, the deployment of nationalist symbols of insecurity (the Turks, the Ustasha, the Germans etc.) were critical to fortifying group loyalty and solidarity and the objectives of the state security establishment. The real agenda of insecurity might then lie in the security establishment of the former Yugoslavia itself - the threatened guardians of the authoritarian myth of socialist progressivism. Milošević may simply be their instrument.

The seeds of national discontent included the intellectual reinvention of Serbian insecurity and identity which nourished the idea of a greater Serbia as a safe haven from cultural and national extinction. The constitution itself encouraged the image of an historically "wronged" Serbia, discriminated against by a false cosmopolitanism associated with a Yugoslav identity and codified in the creation of "autonomous" regions. Milošević skillfully depicted Serbia as victim. With his drive to power coinciding with the fall of communist rule elsewhere in Europe, his concerns were exacerbated. It can be argued that he needed the war to survive demands within Serbia itself. What is clear is that the war strengthened the role of the specialists in violence and correspondingly enhanced their control over a "rump" Yugoslavia.

E. BASES OF POWER

A further critical element in the unpacking of the baggage of conflict is the outline of the bases of power at the disposal of the parties. For the Milošević wing of the party, the power to control the symbols of insecurity was uppermost. With the control of the mass media, public opinion could be managed in the interests of the dominant wing of the Serbian party. Additionally, Milošević's relationship with the security establishment made him a powerful figure. Security ties through him to the Croatian and Bosnian Serbs were a strategic advantage as well. At the international level, Serb-dominated Belgrade controlled the apparatus of diplomacy, enjoyed the advantage of defending the unity of an established

51

state with UN recognition, and was especially skilled in securing UN Security Council Resolution 7I3; the Arms Embargo.[88]

In this atmosphere, leaders in the erstwhile autonomous regions had bases of power tied to popular support that they could rely upon to turn the political divisions of Yugoslavia into sovereign nations. They could also rely on newly developed republican armed forces as well as international opinion that rejected communist policies and economic practices. Their weakness at the diplomatic level, however, was obvious to observers from June 1991 as events rapidly unfolded.

F. ARENAS AND OUTCOMES OF THE YUGOSLAV CONFLICT

The areas of conflict were not in the Serbian "heartland," but rather in the territories of Slovenia, Croatia and Bosnia-Herzegovina, raising the question as to the kind of war it is: an internal civil war or one of aggression. This characterization may have been relatively uncomplicated had Belgrade not enhanced the role and visibility of its surrogates in both Croatia and Bosnia, projecting the conflict as a claim for self-determination by Serbian minorities within the concerned republics. By doing this of course, the war could not continue without the military, political, diplomatic and propaganda support of the Belgrade elite.

The war was devastating in Croatia and Bosnia-Herzegovina: some 230,000 persons (almost 3%), mostly civilians, were killed and over 2,000,000 (23%) were refugees expelled by ethnic cleansing or pushed by fear and destruction from their homes. The documented massacres, sexual abuse, "scorched earth" campaigns and other depredations were widespread. Indeed, the Security Council set up a commission to investigate the atrocities and established a War Crimes tribunal to try potential defendants should those responsible for such criminal violations of law as defined by the statute of the Tribunal be identified and apprehended. The war in this context presented a profound menace to even the minimal outlines of international law and public policy, probably the most serious challenge from a security and humanitarian viewpoint since the Second World War.

This outline can be fleshed out in greater detail, but what we would suggest is paramount because through the haze of understudied Balkan history and ethnology, we can lose sight of the central issue of concern to policy makers: that the conflict here was a struggle about political power waged by people, skilled as all power-driven personalities are, in the mobilization of all values crucial to gaining effective and absolute control. We can improve our understanding of the conflict and its many consequences if we utilize a viable contextual framework to bring into focus the form of conflict and violence as a means of coming to grips with the legal issues of responsibility and accountability.

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[88] Nagan, W., Article on Self-defense in the Journal of International Commission of Jurists

52

G. THE CONTRIBUTIONS THAT LEGAL CULTURE MAKES TO UNPACKING THE WAR

The responses to the war were both political and juridical and it is unclear how well the politicians and the jurists understood each other. From our partisan viewpoint, the war could be seen as one of the most important threats to the rather minimal basic rules that govern world order. We refer to the apparent destruction of the rules governing the use of armed force, the specter of war crimes, human rights abuses and genocide. Still, there was a good deal of complexity of extreme policy significance that lied embedded in the inter-stices of law and policy making as they affect major social processes at this level.

The central policy question concerning the larger world community was whether it is right or wrong politically and legally to support the "status quo"- the unity of the Yugoslav federation (favored by Belgrade), or alternatively support a process of orderly transition that respects the precepts of self-determination (as sought by the other republics). What were the strategic methods that would have been permissible in either of these scenarios? This raises the technically difficult matter of secession versus self-determination: one of the most awkward of jural-political issues in international law. The political dimensions of the problem meant that support for the federal state was also support for a communist authoritarian state with a consistent record of human rights abuse. Assisting the republics on the other hand, meant giving support for multi-party democracy, market economics and greater respect for human rights. By so doing the legal doors of precedent could be opened for similar affairs to emerge legally in other state contexts.

The law and policies evolved from a defense of the "statist" quo to a formulation of the legal conditions of orderly transition. Important quasi-juridical precepts were invoked early in the crisis including such ideas as the absolute impermissibility on the use of force in the crisis, the acceptance of the idea of an orderly process of change, rather than a defense of the status quo. The innovative ideal for the establishment of internal borders that could not be legally changed through force would become principle. The effort to proscribe the use of force and to freeze republican borders was a creative and astute way to apply legal doctrines and procedures to the regional crisis. In effect, the framework suggested the expansion of the policies implicit in Article 2(4) of the UN charter as well as a novel interpretation given the boundaries problem.

Support for the peace plan of the Arbitration Commission to clarify legal issues relating to the reconfiguration of the Yugoslavian state was of particular importance. The characterization of Yugoslavia as being in a state of factual and juridical dissolution contributed to efforts to manage the changing architecture of state systems such as those of Eastern Europe and elsewhere. As important as this was the development of democratic, human rights conditions criteria for the recognition of new states. These requirements went beyond the normative prescriptions of conventional international law and were indicative of an evolving regional international law that was not value neutral when it viewed the core issues of democratic culture, rule of law and human rights standards and market economic orientations

What the Yugoslav issue raised four squares were the interrelationships between the national and international constitutive transitions. Clearly, the framework agreement which built on earlier efforts was indicative of the practical way national sovereignty could be reconciled with the realities of geographic contiguity, reciprocal interdependence and stability. The insistence that human rights standards, democratic institutions, respect for citizenship rights and the empowerment of minorities in reasonably constructive ways remained a significant contribution to the ultimate dispensation for the peoples of the region.

H. Lessons from the Conflict in the Former Yugoslavia

The central crisis of the use of force lay in the ineffectual role that the UN Security Council played. Once the Council imposed the Arms Embargo on the relatively defenseless republics the incentive on the stronger party to negotiate radically diminished. The effort to reduce the war to a humanitarian operation led to even greater levels of embarrassment for the European Union, the United States and the UN. What resulted however is clearly a war of aggression and it raised questions about how far the Security Council would go in extinguishing a state's right to defend itself under Article 51 of the UN Charter.

Finally, on the human rights and humanitarian fronts, a single issue appeared to dominate. If the war was also one of genocide, what responsible choices must the international community have honored in terms of either a commitment to intervene to stop the vile practices, or, to give states and peoples the capacity to defend themselves from extinction?

VI. Relevant Intellectual Tasks for Guiding Policy Interventions and Preventing Genocide

It is clear that while there is an intuitive understanding of what anti-Semitism, or racism, or genocide, or the Holocaust means, the modern problem is that our understanding is simply not deep enough to grapple with the appropriate strategy to secure that it does not happen in the future. In this course we suggest that there are at least five distinct intellectual functions that scholarship must deploy on a concurrent and sequential basis to generate a better understanding of what this phenomena are and what strategies may be rationally deployed to prevent a recurrence of such a tragedy.

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

We now know that human institutions and practices can be destructive if not subjected to the importance of the guidance of preferred values and preferred moral standards. The fundamental values usually coalesce around the idea of universal human dignity. And we found this principle largely on the basis of universal respect. However, respect itself needs considerable reinforcement socially, emotionally, and psychologically. In

short, we must also cultivate the emotional foundations of respect. This means we should more explicitly embrace the idea that our public order at every level, from the micro-social to the global, should be attentive to the importance of the shaping and the sharing, in an optimal sense of affection/positive sentiment. Central to this perspective is that it enhances an inclusive identity that is positive with all of human kind. Perhaps in the past this was seen as an excessive idealism. However, without deference to this value on global level, the survival of our species will be in question. There are important insights and challenges in the work stressing the Anthropocene impact on the earth space community.[89] In short our goals should not only be "*never again*"[90], it should be that the very idea of such a social political outcome as the Holocaust is not even conceptually possible. The central value of effectively deploying the critical tools of normative goal values is that human activity is generally purposive. It is important to supplement purpose with the guidance of clearly identified objectives. In the contemporary era the fundamental global goal values largely agreed upon are the values of universal dignity.[91] In this sense direction to purpose is given by the clarification and specification of the object of human purposes.

The most obvious symbol representing the goal values that oppose genocide and mass murder are in the phrase "*Never Again*". As earlier indicated these words were first used by the inmates of Buchenwald Camp as it was being liberated. It rapidly came to be become the symbolic memorial to the memory of the "Shoah". Its immediate target audience were the Jewish survivors of the tragedy. The symbol gave urgency to the creation of a Jewish State as a kind of guarantor of the *Never Again* goal. In this sense the term had a special meaning and resonance and therefore importance for the people of Israel and the evolution of Israeli nationalism. Its meaning was to percolate beyond the limits of Jewish national culture and Israel. The terms *Never Again* were also used to memorialize the Chilean victims of Pinochet's murderous regime. The memorial is in the Chilean city of Paine. *Never Again* is also memorialized in the genocide museum in Kigali Museum in Rwanda. The highly publicized Argentine Truth Commission Report is titled "*Nunca Más*". However, it should be noted that these *Never Again* memorials came to public consciousness after the tragedy and therefore did not have a preventive effect to constrain it from happening or to generate collective action to intervene. It is possible that for Jews living in the Diaspora and for Israeli nationals *Never Again* has a narrow mean which is confined to persons of Jew heritage only or at least their understanding of its global salience is perhaps ambiguous. One of the authors recalls helping to organize a conference in Sarajevo during the Balkans' War. He approached some Jewish Organizations, but their sense of the importance of a Jewish voice in the Balkans in the context of the genocide there was not acute. However a liberal Jewish leader and his daughter made the trip with him and his presence was indeed powerful and moving. The goal of *Never Again* as a value of

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[89] Nagan, W.P. *Legal Theory and the Anthropocene Challenge: The Implications of Law, Science, and Policy for Weapons of Mass Destruction and Climate Change*, Levin College of Law (University of Florida) Journal of Law and Social Challenges, Vol. 12, p. 150, (2011)

[90] Rummel, R.J. *Never again: ending war, democide, & famine through democratic freedom* (2005)

[91] Schockenhoff, E. *Natural law & human dignity: universal ethics in an historical world* (2003)

global salience has not apparently captured a coherent universality. The terms themselves perhaps imply not only goals but strategies and tactics of prevention. In this sense we generate further complexity about the prospect and the limits of preventive politics inside the sovereign State and as a part of global governance. This is complex. Moreover, the terms may not fully clarify the idea that *Never Again* refers to the extinction of human respect on a scale of enormous magnitude.

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

Considering the above comments and the value implications it is clear that the reproduction of negative sentiment shapes the perspectives and the operations of outcomes like genocide and mass murder. The central challenge from the point of view of value clarification is the challenge of diminishing, preventing and effectively constraining the production and distribution of negative sentiment at every level of social organization from the local or micro-social to the global and macro-social levels. In short there has to be developed strategies that effectively confront, limit and constrain the reproduction of negative sentiment civilized by the displacement of "hate" on those identified as "non-self others". This requires a wider range of enlighten sanctioning strategic values. These broader sanctioning values require a careful thinking through of the strategies of prevention, suspension, deterrence, restoration, correction, rehabilitation and reconstruction. These strategic value objectives directed at the control and depreciation of negative sentiment is further developed below in the section labeled *The Objectives of Intervention*. A central byproduct of the production and distribution of negative sentiment is that it communicates the symbology of hopelessness. Effectually there is no real desirable future, there is survival for chosen and no more.

The production and distribution of the values of negative sentiment remain an important challenge for the maximization and indeed optimal shaping and sharing of the

values of positive sentiment which we have earlier described in terms of affect or affection. The importance of the optimal production and distribution of affection from the local to the global dimensions of human social process is that the emotional drive of affect is a force that may trump or displace the force of negative sentiment. The value of affection is that it shapes the subjectivity of the individual in the direction of expressing the salience of human empathy, love, a solidarity with humanity on a universal basis cemented by compassion and empathetic identification. This means that positive sentiment, affection as express in terms of compassion and empathetic identification diminishes the salience of those cultural lines of identification that makes the other a non-self rather than integrating the other into the self-system of individual identity. In short, mass murder, genocide and the great violations of human rights gain no traction in a universe which seeks to optimally maximize the production and distribution of positive sentiment and affection at every level of social experience. The clarification of these values helps us to better understand the challenges for decision represented by the outcomes of genocide and mass murder in social process.

A central insight from the Holocaust may be generalizable to other forms of genocide, and possibly democide. That is that the identification of a target victim is invariably justified by a culturally cultivated symbol system which seeks to justify the demonization, or the threat that the other poses to the security of the victimizer and the victimizers supporting cast. In the context of the Holocaust the justification for the support of anti-Semitism was rooted in a powerful system of moral beliefs in the dominant religion. It is extremely difficult to extinguish the personal orientation toward anti-Semitism if that orientation is sustained by a powerful system of morality which seeks to justify it. It would appear that when the demonization of the "other" as the basis for encouraging ethnic conflict is predicated on a system of ostensible moral justification. It is extremely hard to secure a change in orientation if the very foundations that secure the moral justification for demonizing the other remain unimpaired. This means that changing the emotional orientation of the victimizer and his acolytes is virtually impossible without an ability to not only change the form of justification which fuels the conflict but also provide an alternative moral frame of reference. This frame of reference, which does exists today, is found in the purposes developed in the UN Charter as well as in the values that are the force behind the culture of international human rights and humanitarian law. The challenge about values therefore is very fundamental. In part it depends on the extent to which the morality of religion might shed itself of interpolations incompatible with the most fundamental values behind religion and secure a degree of compatibility with the articulated values reflected in the UN Charter, its Preamble and the purposes as well as the human rights culture it has promoted and its effort to secure compliance with the fundamental value of humanitarian law. Below we reproduce a diagram which is a graphic challenge representing the problem of the clash between the most fundamental values of international order and the role of the megamurderer and the challenges posed for a defensible world order.

<div style="text-align:center">57</div>

Table 14: Megamurderers and Their Annual Rates[92]
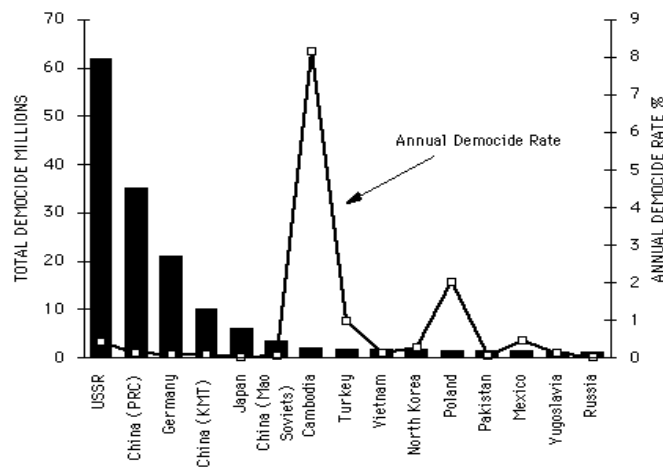
B. THE INTELLECTUAL TOOLS OF TRENDS IN HISTORY AND PRACTICE

The importance of understanding the historic trend in genocide, mass murder and the distinctiveness of the experience of the Holocaust are an important memorial of global salience to the challenges we must meet and how to overcome them. Trend thinking is important because as a Holocaust survivor once put it, man has a capacity to have amnesia about unpleasant memories.[93] Moreover, the historic trend gives us an important insight into the nature of mass murder. Mass murder depends on more than the four categories in the Genocide Convention. Any culturally important symbol of identity can serve as a marker for the purpose of identifying the victim group. Thus, a necessary condition of genocide or mass murder is established. The trend in history which marks the occasion of Genocide and mass murder must also account for the effort to respond to the problem from an international law and practice point of view. Prior to the development of the UN Charter International Law had developed a framework justified under the principles of humanitarian intervention. In the nineteenth century states practiced humanitarian intervention to prevent large scale massacres of human beings.[94]

After the Second World War, the newly founded United Nations generated the first modern human rights treaty, the Convention that outlaws and criminalizes Genocide.[95] This was a milestone in International Law and the development of a common moral understanding about why genocide is intolerable, and should be punished by international criminal law enforceable on a universal basis. After the Second World War the International Community also experienced the trials of the Nazi war criminals in Nuremberg. Among the crimes were the crimes against humanity, perpetrated by Nazis. The Nazi leaders were tried, convicted, some were executed, and others sent to terms of

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[92] *Figure 1.1: Megamurderers and Their Annual Rates (Using the data of Table 1.2)* , in Murder by Government by Rummel, R.J. (1994)

[93] Wiesel, E., *Night* (1960)

[94] Totten, S. *The prevention and intervention of genocide: an annotated bibliography*, Page 47 (2007)

[95] *Convention on the Prevention and Punishment of the Crime of Genocide*, Adopted by Resolution 260 (III) A of the U.N. General Assembly on December 9, 1948 and entry into force on January 12, 1951.

imprisonment.[96] Additionally the newly founded Israeli State sought to exercise a form of universal jurisdiction when it kidnapped Adolf Eichmann, from Argentina and secreted him to Israel where he was put on trial for inter alia, crimes against humanity and war crimes. He was convicted and executed in Israel in 1962.[97] The next major development in the effort to effectively criminalize genocide is reflected in the practice of two tribunals created by the Security Council: The International Criminal Tribunal for the Former Yugoslavia (ICTY)[98] and the International Criminal Tribunal for Rwanda (UNICTR)[99]. The practices of these Courts also stimulated the adoption of the Rome Statute which created a permanent International Criminal Court (ICC or ICCt).[100] The Rome Statute became a binding treaty on 11 April 2002, when the number of countries that had ratified it reached sixty and it legally came into force on 1 July 2002.[101]

It should also be noted that the International Court of Justice has provided pronouncements on various aspects of Genocide. The Cambodian Tribunal was established pursuant to a request in 1997 for assistance to the Secretary General of the UN.[102] The Special Court for Sierra Leone was created on the initiative of the President of Sierra Leone in a letter to the Secretary General of the UN requesting UN assistance in the establishment of a Tribunal to try those responsible for crimes during the Sierra Leone conflict. In 14 August 2000, the United Nations Security Council adopted Resolution 1315 which requested the Secretary General to start negotiations for the purposes of creating a Tribunal for Sierra Leone which was later created on 16 January 2002 pursuant to a special agreement between Sierra Leone and the UN.[103] Thus, there has been juridical activism targeting genocide at the international level. However, the trend in the context of state action to intervene to stop genocide has been more anemic. The degree of intervention in the former Yugoslavia was delayed and generally weak, although intervention did help to secure a peace settlement. In the context of Rwanda states were largely in denial as the mass slaughter of the Tutsi took place.[104] Indeed President Clinton publicly apologized for not authorizing intervention.[105] The intervention in Darfur has been largely symbolic.[106]

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[96] Tusa, A. & Tusa, J. *The Nuremberg Trials: The Complete History of World War II's Famous Trial* (2010)

[97] Yablonka, H. *The state of Israel vs. Adolf Eichmann* (2004)

[98] *The International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991* (The International Criminal Tribunal for the former Yugoslavia or ICTY) Adopted unanimously on 25 May 1993, SC Res. 827, UN SCOR, 48th Sess., 3217th mtg., at 29, UN Doc. S/RES/827; reprinted in 32 I.L.M. 1203 (1992) and 2 Weston & Carlson II.E.11

The International Criminal Tribunal for Rwanda (ICTR), or *the Tribunal pénal international pour le Rwanda* (TPIR), Adopted by the UN Security Council on 8 November 1994. SC Res. 955, UN SCOR, 49th Sess., 3453rd mtg., at 15, UN Doc. S/RES/955 (1994); reprinted in 2 Weston & Carlsson II.E.12

[99] *The International Criminal Tribunal for Rwanda* (ICTR), or *the Tribunal pénal international pour le Rwanda* (TPIR), Adopted by the UN Security Council on 8 November 1994. SC Res. 955, UN SCOR, 49th Sess., 3453rd mtg., at 15, UN Doc. S/RES/955 (1994); reprinted in 2 Weston & Carlsson II.E.12

[100] *Permanent Secretariat of the Assembly of States Parties to the Rome Statute* Resolution ICC-ASP/2/Res.3

[101] *Rome Statute of the International Criminal Court*, U.N. Doc. A/CONF.183/9 or 2187 U.N.T.S. 90 (entered into force July 1, 2002)

[102] *The Extraordinary Chambers in the Courts of Cambodia* (Khmer Rouge Tribunal) A/RES/57/228B 2003-05-022

[103] *Statute of the Special Court for Sierra Leone* (Special Court for Sierra Leone) Security Council resolution 1315 of 14 August 2000 (2000)

[104] Cohen, S. *States of denial: knowing about atrocities and suffering* (2001)

[105] Bennet, J. *Clinton in Africa: the overview; Clinton declares U.S., with the world, failed Rwandans*, New York Times (26 March 1998)

[106] Kenley, D.L. *Political will and the prevention of violent ethnic conflict and genocide: A regional intervention model for the international community*, George Mason University (2009)

59

This suggests that the intelligence predicate which might forecast a genocidal outcome must be greatly strengthened to enhance timely intervention.

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

> "It requires the establishment of the 'intent to destroy, in whole or in part… [the protected] group, as such'. It is not enough to establish, for the instance in terms of paragraph (1), that deliberate unlawful killings of members of the group have occurred. The additional intent must also be established, and is defined very precisely. It is often referred to as a special or specific intent or *dolus specialis*… It is not enough that the members of the group are targeted because they belong to that group, that is because the perpetrator has a discriminatory intent. Something more is required. The acts listed in Article II must be done with intent to destroy the group as such in whole or in part."[107]

Although there have been suggestions by the International Law Commission to rephrase and clarify the specific intent requirement this has not been successful. In fact, United States has insisted that a genocidal intent must be specific. It has insisted that the intent to destroy in whole or in part in Article II must mean the specific intent to destroy. Authorities also recognize that the specific intent requirement for genocide is much more demanding than that require for the charge of murder.[108]

Additionally since genocide may well flourish within the circumstances of high intensity conflict, the problems of investigation, detection, apprehension, prosecution, sentencing, and appeals are indeed formidable. Moreover, the criminalization of genocide cannot always satisfy the sense of justice in the nature of legal sanctions. The best that law can offer is prevention, rather than after the fact prosecution. When we get to prosecution, the damage has been done. Here, we confront the problem of what justice we can squeeze out of legal sanctions. For example whatever sentence is to a given to a convicted defendant the specific issue for justice is that there is no punishment that is proportional to the crime. Indeed, if defendable justice lies in the fair distribution of retribution the practical problem is that there is no link between the magnitude of the crime and any rational fairness in the distribution of the sanction. In short, criminal prosecution is better than nothing but is far

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[107] Case concerning the Application of the Convention on the Prevention and Punichment of the Crime of Genocide (*Bosnia and Herzegovina v. Serbia and Montenegro*), Judgment, 26 February 2007, para.187. See also (e.g.) *Prosecutor v. Akayesu (Case No. ICTR-96-4-T), Judgment, 2 September 1998, paras. 497 and 516; Prosecutor v. krstic (Case No. IT-98-33-A), Judgment, 19 April 2004, Para. 20.*
[108] For a discussion of the issues of proof of intent and the components of specific intent see William A. Schabas *Genocide in International Law: The Crime of Crimes,* 2nd Edition, Page 264-287 (2009)

from the important goals of preventing genocide from happening in the first place. This suggests that more inventive strategies of action and policy must be developed and promoted at every level from the local to the global to generate the preventive politics, preventive cultural practices which identified otherness and make it licit to victimize those in the category of "others". Whether intervention is done in the course of a criminal investigation, or whether intervention implicates in much broader range of sanction-policies represents an important challenge concerning the nature, scope and timing of intervention. A threshold issue must require the clarification of the identity of the intervener or intervening coalition. It would be useful at this point to pause and consider the trends that have developed to enhance the protection of life in the global environment and to juxtapose these trends against the evidence of the recent trend of the fifteen most lethal regimes.

Table 15: Fifteen Most Lethal Regimes[109]

REGIMES [1]	YEARS	REGIME [2] DURATION	TYPE	ANNUAL RATE % [3]	DOMESTIC DEMOCIDE (000)	POPU-LATION [4] (000)
Cambodia (Khmer Rouge)	1975-79	3.83	Communist	8.1605	2,000	6,399
Turkey (Atatürk)	1919-23	4.08	Authoritarian	2.6358	703	6,500
Yugoslavia (Croatia)	1941-45	4.17	Authoritarian	2.5132	655	6,250
Poland (Post-War I)	1945-48	3.33	Authoritarian	1.9893	1,585	23,930
Turkey (Young Turks)	1909-18	9.17	Authoritarian	.9553	1,752	20,000
Czechoslovakia (Post-War I)	1945-48	2.83	Authoritarian	.5390	197	12,916
Mexico	1900-20	21.00	Authoritarian	.4497	1,417	15,000
USSR	1917-87	71.00	Communist	.4224	54,769	184,750
Cambodia (Samrin)	1979-87	8.92	Communist	.3976	230	6,478
Uganda (Amin)	1971-79	8.33	Authoritarian	.3118	300	11,550
Angola	1975-87	12.17	Communist	.3021	125	3,400
Rumania (Carol/Michael)	1938-48	10.08	Authoritarian	.2949	484	16,271
Korea, North	1948-87	39.33	Communist	.2502	1,293	13,140
Uganda (Post-Amin)	1979-87	8.75	Authoritarian	.2038	255	14,300
Mongolia	1926-87	61.17	Communist	.1873	100	873
WORLD	1900-87	17.46 [5]		.2350 [5]	129,547 [6	2,325,000 [7]

1. For State regimes older than one-year and with a population over 750,000.
2. Duration is in years.
3. Percent of citizens killed in democide per year of the regime.
4. Mid-period population.   5. Average.   6. World total.   7. For 1944.

1. INTERVENTION AND THE RESPONSIBILITIES OF IDENTITY

Those who intervene must themselves have embraced a pattern of identity that does not disidentify with the victim. In short, to avoid the specter of interveners taking advantage of the victims, their training and outlook must embrace a more inclusive sense of human dignity. Should the intervener fall short on this matter, the effectiveness and/or appropriateness, as well as the legitimacy of intervention, will be called into question. Doubtlessly, allegations made about the UN taking advantage of captured Bosnian Muslim women will be recalled. Canadian troops, it has been claimed, were compromised in

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[109] *Table 1.3: Fifteen Most Lethal Regimes*,

Somalia. U.N. peacekeeping mandates, it was suggested, created irreconcilable conflicts between the passivity of peacekeeping and the obligation to prevent genocide or mass murder. Finally, the creation of the tribunal for the former Yugoslavia generated a concern that perhaps race was a defining element in the tardy commitment to the Rwandan tribunal.

2. THE OBJECTIVES OF INTERVENTION

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

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

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

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

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

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

(5) **CORRECTION**. The sanctioning policy of correcting the conduct or behaviors that condition genocide and mass murder require a measure of "peace," a semblance of "contained tension," and a generation of public and private motives. These motives should be designed to humanize and empathetically identify with the presumed otherness of both

62

victim targets and perpetrator actors, more than to breach the so-called impermeability of some levels of group identity like race, ethnicity, language, religion, political ideological affinity, and more. In effect, correcting is the stratagem of moving a social order from conflict, to contained tension, to active collaboration.

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

(7) **RECONSTRUCTION**. Professor Reisman suggests the process of reconstruction "involves identifying social situations that generate or provide fertile ground for violations of public order, and introducing resources and institutions that can obviate such situations."[110] If we accept the Rummel thesis that totalitarian/authoritarian societies are most frequently identified with policies and practices of genocide and mass murder, then reconstruction in favor of a democratic rule of law-governed system of public order with regular elections, public transparency, and vigorous and secure civil societies, may hold a key to reconstructive efforts to suppress or prevent genocide.

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

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[110] Reisman, W.M. *Institutions and Practices for Restoring and Maintaining Public Order*, DUKE J. COMP. & INT'L L. 175 (1995)

of enormous tragedy erodes the moral fiber of that power, and erodes confidence in the force of its leadership worldwide.

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

3. THE PERSPECTIVES OF EXPECTATION RELATING TO INTERVENTIONS TO PREVENT AND DETER GROUP DEPRIVATION

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

4. BASES OF POWER

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

64

(1) [H]uman rights law, the law of state responsibility, and the developing law of liability without fault; (2) international criminal tribunals; (3) universalization of the jurisdiction of national courts for certain delicts, called International crimes; (4) non-recognition or the general refusal to recognize and to allow violators the beneficial consequences of actions deemed unlawful; (5) incentives in the form of foreign aid or other rewards; (6) commissions of inquiry or truth commissions; (7) compensation commissions; and (8) amnesties.[111]

To these practices, the institutionalization of peacekeeping operations through the U.N. may be added, as well as other institutions of international decision-making. These practices of securing world public order depend on a resource base to fund them. They also depend on the seriousness with which states seek to prevent intervention in their internal affairs[112] and the strength of international concern. If democracy reduces the risk and occasion of genocide, does this not suggest that respect for the authority base of the people is a vital genocide-preventing stratagem? The role and resources of NGOs in the context of the former Yugoslavia were other important bases of intervention to prevent genocide.

C. THE INTELLECTUAL TOOLS THAT MAY BE PROVIDED BY THE STUDY OF SCIENTIFIC CONDITIONS

It is important that we understand the conditions that predispose a human community to generate outcomes of genocide and mass murder. Some of this factors repose in complex factors of socio-psychological experience other factors require a deeper appreciation of the foundations of social conflict, and the importance of conflict resolving strategies. What is important in conflict is that the promoters of conflict often have to imagine or invent a perennial enemy or threat and the capacity to vastly exploit insecurity which includes the demonizing of the "other", the ostensible threat.[113] Science may help us to understand the phases of social conflict, which in its early phases may appear to be benign. The central point in understanding emerging conflict in its early phases is that the tools of conflict resolving intervention may be more effective at that phase of the conflict. When the conflict evolves into the dynamic of high intensity interaction, intervention is more difficult, more risky, or expensive and the likelihood of genocidal outcome is probable.[114] For example when the Nazi started their campaign of victimizing the Jews of Germany would the regime then have been hesitant in proceeding, if the major powers of the world had uniformly condemned the Nazi's initiatives and as well roundly condemned Nazi anti-Semitism?

Genocide frequently is preceded by what is called "ethnic conflict". Ethnic conflict when it gravitates to levels of high intensity can have a high human cost. Moreover, ethnic

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[111] *Id.* at 177.
[112] *See* U.N. Article 2.7.
[113] Wistrich, R.S. *Demonizing the other: antisemitism, racism & xenophobia*, Vidal Sassoon International Center for the Study of Antisemitism (Universiṭah ha-ʿIvrit bi-Yerushalayim) (2003)
[114] Walraven, K. *Early warning and conflict prevention: limitations and possibilities* (1998)

conflict is usually a prelude to the possibility of genocide. One of the central challenges confronting modern social science is to better explain the conditions of ethnic conflict in order to get an understanding of what precisely is happening. However, ethnic conflict carries enormous freight. It is conventionally thought to be inexplicable. The conventional wisdom suggests that ethnically segmented society for unknown reasons breakout into patterns of inexplicable conflict and ferocity.[115] Since the conflict is inexplicable it is not possible to justify interventions into incomprehensible conflicts. This generally leads to a certain paralysis from the international community and results in the bloodletting tragedy of mass murder and genocide. This means that early intervention will never be an easy policy matter. Apart from the policy limitations we are in effect dealing with an epistemological problem. We need a theory and method that unpacks the mystery of ethnic conflict in order to not only assign responsibility but also to shape rational and timely strategies of intervention. Here international law may provide some important sources of epistemological guidance.

The Nuremberg Trials were confronted with essentially a form of ethnic conflict writ large. How where the prosecutors to assigned responsibility for war crimes and crimes against humanity? The conventional wisdom had been that responsibility with a non-transparent entity called the sovereign state.[116] The significant contribution of Nuremberg was to penetrate the veil of obscurity and identifying the human agents in decision making goals were responsible for the decisions to make war and violate elemental humanitarian standards.[117] The model of Nuremberg therefore gives us a clue to the proper intelligence function in determining the question of intervention. Central to that function is the identification of both formal and effective decision makers, and to make them responsible for their conduct. What is critical here are, the identification of the actors and the chain of responsibility for the consequences of their choices. Such procedures that is to say, looking for the rights things, may provide us with the intelligence predicate at an early stage of the conflict where intervention may be better achieved through diplomacy, economic coercion, propaganda, without necessarily having recourse to the military option. What must be kept in mind here of course is that "thick" sovereignty does provide a shield against early intervention. However, if it can be shown that there are sufficient elements that touch in the abuse of sovereignty or the erosion of legitimacy, then justifications that are objective may be found for the appropriate strategic form of intervention be it persuasive or coercive.

From what we had suggested about the question of when intervention should happen requires a better set of tools to guide the relevant enquiry concerning whether to intervene and what form of intervention should take place. Social Science has provided us with a useful typology for identifying the 5 stages of conflict, including relevant signals and

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[115] Lobell, S.E. & Mauceri, P. *Ethnic conflict and international politics: explaining diffusion and escalation*
[116] Chiedu Moghalu, K. *Global justice: the politics of war crimes trials* (2006)
[117] *Principles of International Law Recognized in the Charter of the Nüremberg Tribunal and in the Judgment of the Tribunal, 1950*, Report of the International Law Commission covering its Second Session, 5 june - 29 July 1950, Document A/1316

markers that provide the appropriate foundation in terms of facts on the ground that will tailor intervention in the most effective and cost saving way.

Essentially, the five stages of conflict and their signals are as follows:[118]

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

(2) **Increased Political Tension**. In the situation of increased political tension, intensified levels of "systemic frustration" begin to appear, generating accented social cleavages, often of a sectarian character. The specific signals of this kind of situation include both new and old political parties exploiting issues of political polarization or sectarianism. Elections are usually heavily challenged. The courts are considered politically compromised. Press freedoms are under pressure. Protests in non-violent ways and even violence "against property and national symbols" become apparent. Political protests, often by students, labor interests groups, and 81 sectarian groups become more frequent. Increased levels of unemployment and economic stagnation are further signals of increased political tension.

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

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

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[118] This is drawn from Article 33 of the U.N. Charter. These are processes indicated in Chapter VI and indicative of a Security Council role in calling on parties to avail themselves of such means of dispute resolution. United Nations, art. 34 (2).

67

abuse of human rights. In economic terms, a situation of lower intensity conflict is an unattractive investment for the prudent investor. Capital leaves, and disinvestment often happens.

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

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

D. THE INTELLECTUAL TOOLS OF FORECASTING

It would seem to be clear that the development of intellectual tools to improve on the forecasting of the possibility of genocide or domicide[119] would seem to follow from the value of trend and scientific analysis concerning the prospect of genocide or domicide. It is an important matter therefore for both scholars and public policy makers to come to grips with the problem of mass murder and genocide in the future. Here we should deploy skills that provide us with a possible picture of a realizable future. This could be done by appreciating the trends and conditions about peace, conflict and human rights in the world community and providing a prediction from this realistic background of what we might anticipate as a least desirable future. We may step back and with the same data project a future that may represent the most realistic optimistic sense of a desirable future. Obviously the least desirable future may be increased conflict exaggerated otherness, clash of civilizations, religious and ideological parochialism, and more and unique manifestations of racism. The more desirable future will see an increase in global solidarity, increase recognition of our interdependence and inter-determination, greater value given to universal human respect, a deeper regard for the critical human subjectivities encased in the emotions of positive sentiment and global affect.

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[119] Rummel, R.J. *Death by government*, Page 36 "the murder of any person or people by a government, including genocide, politicide, and mass murder" (1997)

68

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

Here we must focus on bringing the great humanitarian values in human rights and humanitarian law from the global to the local and even micro-social institutions of human association. It is through human rights and humanitarianism that we create the ideals of global solidarity. To create and sustain global solidarity we need more human rights, we need more strengthen identifications with the values of affect and respect and a universal embracing of the goal and indeed the ideals of human dignity. We therefore recommend that the shaping and the sharing of positive sentiment, affection, be a self conscious policy of governance and civil society at every level from the global to the local. In short, humanity will in general be better off if it maximizes the shaping and sharing of affection as a crucial element in the enhancement of the universality of respect and human solidarity. There is truth in the wisdom of a contemporary Hindu mystic who reminded us about the love aspect of affection: "in unselfish love, there is no such thing as oriental love and the occidental love. In its pure form love is a universal factor governing and guiding life. But for its existence life is not worth having".[120] However, the prospect those lingering practices which thrive or cultivate the values of human indignity will doubtless remain with us. Here we must be ever watchful at every level of society that the pathological seeds of negative sentiment and hate are never allowed to germinate.

VII. Conclusion

In this article we have considered the Report of Albright and Cohen an extremely important and constructive contribution to better understanding of the importance of preventing genocide from the perspective of US national interests and the fundamental interests of the global community. We have noted some of the criticisms which we do not believe, undermine the essential thrust of the Report. We have expressed some disquiet at the tone of Rieff's appraisal. However, even without the harshness of his words, he has also generated important insights for the improvement of our understanding of genocide and the prospects of appropriate intervention.

In this article we have borrowed and sought to integrate diverse sources, on an interdisciplinary basis, to provide an integration of knowledge, value and strategic thinking. For an improvement of the performance of policy and decision in seeking to prevent and deter genocide and mass atrocity. In particular we have borrowed from the literature of the policy sciences the five intellectual tasks which are the foundations of policy thinking. We have tried to show that a utilization of these five tasks is indispensible to responding effectively to the problem of mass murder and genocide, in terms of policy directed solutions. We would therefore modestly suggest that the important insights generated by the Albright-Cohen Report be modestly recast to ensure that the critical

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[120] Chidbhavananda, S. Comments on *The Bhagavad Gita*, Page 75 (2000)

69

intellectual tasks central to policy clarification, prescription, invocation, and application are revisited with a view resharpening the guidance that may be given to practical decision makers as they determine the gravity of the problem, the eminence of issues that it represents, the appreciation of the trend within which occurs, the conditions which shape the form of the problem and a more accurate availability to forecast and to provide timely, creative strategies for practical solutions. In setting this out we have also considered that the complexity of anti-Semitism, the complexity of connecting anti-Semitism to Nazi policy and practice, must off course account for the way in which emotions are manipulated recognizing that solutions to the problems of negative sentiment must lie in understanding the salience of positive sentiment and as well an appreciation of how the symbols of positive sentiment may reshape the emotional foundations that sustain conflict and enmity and contain the seeds for a broadening and inclusive identification with "non-self others" with whom we might construct bonds of human solidarity and empathy.

Figure 9: The above figure represents the power of the dark side and the mark it imprints on the human prospect. It also indicates the importance and difficulties of effective intervention.[121]

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[121] "Branded" is a limited edition selection of Stan Lebovic's Holocaust art