INTRODUCTION

Susan H. Bitensky

The chronic reoccurrence of mass atrocities as part of the human saga is deeply depressing.[1] The emotional reverberation is not caused solely by the shock of such wanton cruelty and destructiveness. For this writer, the desolation also derives from our seeming helplessness in preventing or stopping the massacres.[2]

It would be one thing if the impulse to commit mass atrocities was locked within the human genome. The sounder view, from a modern scientific standpoint, appears to be that the violence has been largely due to societal factors.[3] If science is correct, then preventing and stopping violent outbreaks like genocide, war crimes, and crimes against humanity should be entirely doable via law and education as well as by improvements in the economic and social conditions which conduce to engendering perpetrators.[4]

Humankind has toiled and even made some progress, now and then, in upgrading and equalizing these conditions.[5] On the moral front, there

---

1. *E.g.*, for a partial enumeration of genocides since 1945, *see* Scott Lamb, *Genocide Since 1945: Never Again?*, SPIEGEL ONLINE INTERNATIONAL (Jan. 26, 2005, 2:35 PM), http://www.spiegel.de/international/genocide-since-1945-never-again-a-338612.html.

2. *See id*; Gregory H. Stanton, *How We Can Prevent Genocide: Building an International Campaign to End Genocide*, GENOCIDE WATCH, http://www.genocidewatch.org/howpreventgenocideic.html (last visited Feb. 9, 2015).

3. *See* PATRICIA S. CHURCHLAND, TOUCHING A NERVE: THE SELF AS BRAIN 153-67 (2013).

4. With respect to economic and social inequities as a root cause of genocide, *see* United Nations, Office of the Special Adviser on the Prevention of Genocide, Prevention of Genocide 4-5, http://www.un.org/en/preventgenocide/adviser/pdf/osapg-_booklet_eng.pdf. With respect to economic deprivation as a contributing cause of mass atrocities generally, *see* ALEX J. BELLAMY, GLOBAL POLITICS AND THE RESPONSIBILITY TO PROTECT: FROM WORDS TO DEEDS 1881, 1885 (2011).

5. *See, e.g.*, UNICEF, STATE OF THE WORLD'S CHILDREN: CELEBRATING 20 YEARS OF THE CONVENTION ON THE RIGHTS OF THE CHILD 15-16 (2009), *available at* http://books.google.com/books?hl=en&lr=&id=TsSsUZ990HUC&oi=fnd&pg=PA1&dg=unicef+progress+reports&ots=uVs0C2 Kgvi&sig=J9SPF20+4QYnzex (chronicling progress in protecting child survival and development).

has been an inching progress too.[6] For example, it was a sickened and unnerved world which proclaimed "never again" in response to the Holocaust,[7] and, inspired by that sentiment, erected the protective shelter of international human rights law.[8] So, why do mass atrocities continue to occur? And, why have they not at least become less frequent since 1945?

The short answer is that we have not done enough. We have not come close to eradicating the ignorance, brutalization, inequities and injustice, which breed génocidaires and their like. Nor—and this is critically important—have we cabined the big-power politics which have regularly shied from, impeded, or precluded organized endeavors to halt mass atrocities in their blood-soaked tracks.[9] Yet, especially during the twentieth and twenty-first centuries, law has shown itself quite capable of making progress in thwarting or punishing political behemoths' various inimical agendas. The Nuremberg convictions and those handed down by more modern international criminal tribunals are an undeniable testament to this effect.[10] Similarly, consider that highly-placed officials from the administration of George W. Bush have reason to think twice before venturing outside the United States due to the censure and punishment which universal jurisdiction could visit on them as former torturers.[11] Indeed, the reality is that, post-World War II, the evolution of

---

6. Indeed, the very existence of international human rights law as a distinct body of law began with the United Nations Charter in 1945, marking a profound psychological shift in the valuing of human dignity and welfare. *See* Susan H. Bitensky, *The Role of International Human Rights Law and Comprehensive Historical Methodology in Resolving the Conflict Between Positive Law and Natural Law Theories*, THE JOURNAL JURISPRUDENCE 219, 228-32, 235 (2013).

7. AIDAN HEHIR, THE RESPONSIBILITY TO PROTECT: RHETORIC, REALITY AND THE FUTURE OF HUMANITARIAN INTERVENTION 119 (2012).

8. Bitensky, *supra* note 6, at 228.

9. HEHIR, *supra* note 7, at 119, 120-26, 172-77.

10. U.S. v. Goering, 6 F.R.D. 69 (Int'l Mit. Trib. 1946) [hereinafter The Nuremberg Trial]; *see*, *e.g.*, Prosecutor v. Brdjanin, Case No. IT-99-36-T, Judgment, P9, 503 (Sept. 1, 2004) (International Criminal Tribunal for the former Yugoslavia's Appeals Chamber reaffirmation of convictions for Brdjanin's role in ethnic cleansing).

11. *See* Center for Constitutional Rights, *Universal Jurisdiction: Accountability for U.S. Torture*, http://ccrjustice.org/case-against-rumsfeld (summarizing how universal

law has been a study in nations gradually but steadily ceding control over determinations of accountability for mass atrocities and related wrongs. Specifically, nations have been ceding this control to the governance of international humanitarian and human rights laws and to the monitoring or adjudicative bodies these laws have established.[12]

The fundamental point is that it is within human competence via law's instrumentality not only to curb violence but also to curb, to a meaningful degree, the power politics which often allows and sometimes sponsors mass violence. It may, in fact, be an auspicious time to bring our ingenuity decidedly to bear in fulfilling international law's potential against barbarity; national sovereignty as legal defense to mass atrocity has been and is losing traction.[13] Nor is it foreordained that our present inadequacies in strengthening international law must be the future's inevitability. Surely we can do better.

The majority of articles appearing in this issue of the *Michigan State International Law Review* are based on presentations delivered by the authors at a March 2015 symposium concerning the roles of international humanitarian law and the related doctrine of responsibility to protect (R2P) in stopping mass atrocities which are actually under way or imminently about to be so. As such, the articles provide a window on how this law and doctrine may or may not assist in putting the kibosh on big-power politics (and other negative dynamics) operating behind the scenes. In connection with these roles, the articles variously address the historical development of the law and doctrine as well as the strengths and weaknesses of each as presently constituted; some articles also offer proposals for reforming the status quo.

The articles concerning historical development cover such subtopics as whether the original version of R2P has been disadvantageously watered down; whether R2P has brought any added value to the international law on humanitarian intervention; how the evolving concept of sovereignty has shaped the law on humanitarian intervention and R2P;

---

jurisdiction may be exercised to hold certain Bush administration officials criminally liable for torture).

12. HEHIR, *supra* note 7, at 187, 191-94.

13. *Id*. at 182-84, 187, 191-93.

whether R2P is too inflexible unless enabling juristic legal principles, e.g., common law principles of equity, infuse the doctrine; and the theoretical contributions of non-western nations to the development of R2P.

With respect to the viability and effects of international law and R2P, the articles include subtopics on whether the advent of the latter has made a dent in stopping mass atrocities, with special attention to the ongoing situation in Syria; whether R2P has caused an increase in third-party interventions; whether R2P has eased, aggravated or left unaffected the practical challenges often posed by intervening in mass atrocities; and whether R2P, in order to be truly useful, should be transformed into a duty to protect.

Though I am merely the convener of the symposium on which these articles are predicated, rather than a substantive contributor, I cannot resist the opportunity to add a few quick thoughts about the overarching subject. For what it's worth, my own view[14] is that both international humanitarian law and R2P, in their contemporary versions, are grossly wanting for the purpose of halting mass atrocities. I think that the reason for the deficit has to do with two interrelated phenomena. On the one hand, realpolitik continues to eviscerate whatever potential international law or R2P may have to stop the atrocities. Whether within the walls of the U.N. Security Council or beyond, dominant states have frequently shown hostility to, or a lack of political will for, mounting armed interventions where the perpetrators may be these states' proxies or where other national interests make intervention unattractive. In this all too familiar scenario, potentially antithetical international law and R2P both appear to count for little.

On the other hand, the victims and intended victims of mass atrocities—those who are most immediately in need of effective humanitarian intervention—are utterly powerless, under either law or doctrine, to demand and receive this sort of intervention. The imperiled have no legal voice and no legal clout to trigger the actions integral to their rescue. Given the resulting imbalance of legal (and other) power as

14. My thesis concerning humanitarian intervention, synopsized in the textual discussion which is set forth above, will be supported and more fully explicated in a future law review article.

between major-league nations and at-risk people, it is no surprise that the mighty do not intervene when they do not care to, quite regardless of the victims' plight.

This extreme lopsidedness logically raises the question of what would happen if the people's juridical helplessness were altered? What might ensue if, say, international lawmakers were to recognize a new third-generation human right, i.e., a people's right to U.N. armed humanitarian intervention to stop mass atrocities, accompanied by modification of the U.N. structure so as to make fulfillment of this right feasible under specified people-oriented conditions? This is new thinking and, admittedly, a tall order; it is definitely outré.

But it is not impossible. It is certainly no more impossible than dismantling the social, economic, and legal edifices which once permitted slavery and the slave trade; allowed the centuries-old treatment of women as second-class citizens; condoned the use of torture as a legal aspect of meting out "justice"; assumed the lack of individual accountability for human rights violations; and so on. If humankind could reverse all of these entrenched and far-reaching societal ills, then why not this one too? Basic human decency and a compassionate regard for the dignity and physical and psychological integrity of our fellows demands that, at a minimum, we roll up our sleeves and try. I propose that it is time to inaugurate an approach more immediately responsive to at-risk peoples and respectful of them as actors, and not just victims, in their own deliverance.