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A FAILURE OF PERSPECTIVE: MORAL ASSUMPTIONS AND GENOCIDE

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Abstract: Samantha Power's book examines the American political tactic of doing nothing in response to the major genocides of the twentieth century. Power argues that American leaders are apathetic in response to genocide because politicians and the general public are suffering from a failure of imagination. Since genocide involves human anguish at an enormous scale, Power's contention is that human nature would rather turn away from recognizing such horrors. While Power's argument is persuasive, this Book Review argues that the reasons for apathy in response to genocide stem from a more fundamental failure of moral and legal perspective. This Book Review analyzes the Anglo-American legal structure as an outgrowth of what Carol Gilligan refers to as an "ethic of justice." Because Anglo-American law is primarily concerned with defining and protecting individual rights, acting out of a sense of responsibility to prevent genocide can seem fraught with legal tension.

INTRODUCTION

Samantha Power's book, "A Problem from Hell": America and the Age of Genocide, examines the consistent non-response of American leaders to genocide throughout the twentieth century. Her book details the failed efforts of lobbyists and legislators to enact laws and mobilize reaction in order to prevent genocide from commencing or to stop genocide once it has begun. Power, through her meticulous research, clearly demonstrates that American politicians have been aware of all of the major genocides of this century as they were taking place and details the excuses those in power have used time and again to justify their inertia. Although former presidents have repeatedly pro-

2 See id. at XI-XXI.
3 See generally id.
claimed "never again" when remembering the Holocaust, Power comes to the troubling conclusion that "never again" truly means, "Never again [will] Germans kill Jews in Europe in the 1940's."4

Subsequent to the Holocaust, genocides in Cambodia, Iraq, Bosnia, and Rwanda demonstrate that genocide remains a tool of terror long after World War II.5 Perhaps even more troubling, under the current international legal system, nothing affirmatively prevents genocide.6 For example, when the Khmer Rouge (KR) entered Cambodia's capital city in April of 1975 and began demanding that citizens leave Phnom Penh immediately,7 what followed was a campaign of genocide waged for fifteen years with a brief period of Vietnamese intervention.8 American President Jimmy Carter actually assisted the murderous Khmer Rouge regime by evicting the Vietnamese and reinstating Khmer Rouge control of Cambodia.9

4 Id. at 504 (quoting DAVID REIFF, SLAUGHTERHOUSE: BOSNIA AND THE FAILURE OF THE WEST 27 (1995)).

5 See id. at 333–34 (proffering an example of the ease and speed with which the Rwandan government launched its genocidal campaign); see also PHILIP GOUREVITCH, WE WISH TO INFORM YOU THAT TOMORROW WE WILL BE WILLED WITH OUR FAMILIES 84–90 (1998).

6 Matthew Lippman, GENOCIDE: THE CRIME OF THE CENTURY. THE JURISPRUDENCE OF DEATH AT THE DAWN OF THE MILLENNIUM, 23 HOUS. J. INT'L L. 467, 523–24, 527, 529–31, 535 (2001); Felice D. Gaer, GENOCIDE. CONCEPTUAL AND HISTORICAL DIMENSIONS, 89 AM. J. INT'L L. 855, 856 (1995) (noting that there is an "absence of any effective international mechanism ... to prevent genocide"); see also Major Joseph A. Keeler, GENOCIDE: PREVENTION THROUGH NONMILITARY MEASURES, 171 MIL. L. REV. 135, 137 (2002) (stating that "neither [the Genocide Convention] nor the U.N. has been able to prevent genocide"). See generally POWER, supra note 1. Power, through her successive illustrations of all the major genocides of this century, demonstrates that none of the bystander countries or international organizations who witnessed these atrocities faced consequences for failing to take measures to stamp out the escalating violence. Id. For further discussion of the Genocide Convention's ineffectiveness, see discussion infra Part II.B.

7 POWER, supra note 1, at 87–88. Upon arrival, the KR justified their demand that citizens evacuate the capital immediately by claiming that American B-52 bombers were about to "raze the city." Id. at 88. Over the next few days, more than 2 million people were herded onto the road from Phnom Penh on foot. Id. The KR ensured that the exodus would take place on foot by slashing the tires of cars and bicycles. Id.

8 See id. at 87, 140, 147, 154. Vietnam launched its full-scale invasion of Cambodia on December 25, 1978. Id. at 140.

9 See id. Most Americans greeted the news that Vietnam had invaded Cambodia with distress, hearing only that an enemy of America had invaded another country. Id. at 146. Those who understood what had been transpiring in Cambodia had a different response. For example, Andrew Young, the U.S. ambassador to the United Nations, told reporters:

I almost always think it's always wrong for a country to transgress the borders of another country, but in the case of Cambodia I'm not terribly upset ... . It is a country that has killed so many of its own people, I don't know if any American can have a clear opinion of it ... . It's such a terribly ambiguous moral situation.
Similarly, in 1980, American President Ronald Reagan branded Saddam Hussein’s chemical weapons attacks against his own people, the Kurds, an “internal affair.” As such, the United States did nothing to thwart Hussein’s efforts. When Slobodan Milosevic began “ethnic cleansing” in Bosnia, he knew that the international community was more concerned with rhetoric than action. Although the UN pointed fingers at the main aggressors, imposed economic sanctions, deployed peacekeepers, and helped deliver humanitarian aid, the U.S. and its allies did not intervene with armed forces to stop genocide until it was too late. When the Hutu power majority seized control of Rwanda in early April of 1994 and began using the government’s radio station to perpetuate the murder of 800,000 Tutsis in 100 days, the international community labeled the problem “tribal hostility” and withdrew UN troops from the State. Those who wish to perpetrate genocide have needed only to look at recent history to realize that nothing will be done to stop them.

Power asserts that American nonintervention has its roots in a fundamental failure of imagination—that because genocide is by nature unfathomable, the general public, presidents, and policy makers alike have chosen to look the other way instead of wrapping their minds around, and acting upon, the horrific. She also concludes

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*Id.* Interest-based calculations led President Carter to choose between the evils of a genocidal regime or an enemy whose regime was expanding. *Id.* The U.S. had an obvious interest in deterring Vietnamese and Soviet influence in the region, so President Carter sided with the dislodged KR regime. *Id.*

10 *Id.* at 170, 173. Saddam Hussein’s forces destroyed thousands of Iraqi Kurdish villages and close to 100,000 Iraqi Kurds, “nearly all of whom were unarmed and many of whom were women and children.” *Id.* at 172.

11 See *id.* at 173.

12 Power, *supra* note 1, at 249.

13 *Id.* at 251.

14 *Id.* at 333–34, 355. The Hutu power majority prepared lists of Tutsi names and addresses, which were broadcast over the national radio, Radio Milles Collines, with instructions that the names of those listed be killed. *Id.* at 333. Members of the *Interhamwe*, the Hutu power’s military, would routinely inspect piles of dead bodies to verify that they had killed everyone from the list. *Id.* President Clinton’s administration, fresh from a humanitarian catastrophe in Somalia, knew that there was much to be risked from intervening in Africa and little to be gained. *Id.* at 335. Thus, Washington demanded that UN peacekeepers be withdrawn from Rwanda. *Id.*

15 See Lippman, *supra* note 6, at 523–24, 527, 529–31, 535; Gaer, *supra* note 6, at 856; Keeler, *supra* note 6, at 137.

16 Power, *supra* note 1, at XVII–XVIII. Power assumes that this must be true because of the sheer number of articles and speeches addressed to Americans that failed to raise a critical mass of furor over the most atrocious of crimes. *Id.* at 304–05. Power also argues
that American nonintervention in the face of genocide has actually been a successful policy of avoiding conflicts that do not clearly implicate American interests. Although there is a common misconception that the United States did not know about genocides as they were unfurling, Power's painstaking research proves that American presidents have been acutely aware of what was taking place; they simply lacked the will to do anything about it. Because genocide does not clearly impact American profit or pleasure, those in power have deliberately obscured the truth of shocking events in order to avoid "do[ing] something" about genocide.

Inspired but not convinced by Powers' analysis, this Book Review argues that the roots of nonintervention lie, not in a failure of imagination, but in the failure of our legal system's moral perspective to address adequately the responsibilities genocide raises. Applying Carol Gilligan's theory of distinct patterns of gender-based moral development to the current legal structure reveals that our system is an outgrowth of a so-called masculine morality, which is primarily concerned with abstract notions of justice, individual rights, and self-interest. Instances of genocide provide excellent examples of the inherent weaknesses of a universal application of such morality, which Gilligan refers to as an "ethic of justice." In contrast, Gilligan's "ethic of care" provides a dramatically different perspective of the responsibilities human beings owe one another, an outlook that is a necessary first step toward thinking about preventing genocide.

that our failure to prevent genocide has its roots in our leaders' inability to take courageous moral stances that could have mobilized the necessary public support. Id. at 373.

17 See id. at 508.
18 See id.
19 Id. (quoting the Secretary of Defense, DEPARTMENT OF DEFENSE, SECRET DISCUSSION PAPER: RWANDA 173, 359 (1994), who stated, "Be Careful. Legal at State was worried about this yesterday—Genocide finding could commit [the U.S. government] to actually 'do something.'").
21 CAROL GILLIGAN, IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN'S DEVELOPMENT 100 (1982); see also Hilary Charlesworth et al., Feminist Approaches to International Law, 85 AM. J. INT'L L. 613, 622 (1991). While Gilligan's work focuses on developmental differences as an outgrowth of gender, this Book Review is not interested in dividing moral perspectives along gender lines, but in the development of Anglo-American law according to the ethic of justice and how such an ethic fails to address adequately the needs raised by genocide.
22 See GILLIGAN, supra note 21, at 62–63.
23 See id.
Part I of this Book Review will discuss Gilligan’s theory of gender and moral development and its link to Anglo-Saxon law.\textsuperscript{24} While Gilligan’s analysis focuses on gendered causes for differences in moral perspective, this Book Review is not concerned with stereotyping along gender lines, but is instead interested in analyzing the dueling views of morality that Gilligan generates.\textsuperscript{25} Toward that end, Part II will focus an ethic of care lens on the shortcomings of a rights-based legal structure in the face of genocide.\textsuperscript{26} Because the ethic of care views the well-being of others as critical to the happiness of the self, the ethic of care is directly at odds with a rights-based ethic of justice view of the world, which privileges self-interest.\textsuperscript{27} Part III will explore the ways in which operating from an ethic of care perspective would redefine the international community’s potential to prevent genocide.\textsuperscript{28} Although there are many possible solutions for preventing genocide, this Book Review’s focus is the tendency of the Anglo-Saxon legal system’s moral underpinnings to impose heavy restrictions on intervention, in ways that impose stumbling blocks to thinking about genocide prevention.\textsuperscript{29}

I. An Ethic of Justice Versus an Ethic of Care: Carol Gilligan’s Theory of Moral Development

In 1982 Carol Gilligan responded to a reigning formulation of moral development that Lawrence Kohlberg had proposed.\textsuperscript{30} According to Gilligan, Kohlberg had turned a deaf ear to differences in gender, and in so doing, had made masculine moral development the norm against which women seemed woefully immature.\textsuperscript{31} Gilligan

\textsuperscript{24} See discussion infra Part I.
\textsuperscript{25} Gilligan herself concedes that both modes, the ethic of justice and the ethic of care, converge when people reach maturity. \textit{GILLIGAN, supra} note 21, at 174.
\textsuperscript{26} See discussion infra Part II.
\textsuperscript{27} See \textit{GILLIGAN, supra} note 21, at 100; Charlesworth et al., \textit{supra} note 21, at 622.
\textsuperscript{28} See discussion infra Part III.
\textsuperscript{29} See \textit{GILLIGAN, supra} note 21, at 100; Charlesworth et al., \textit{supra} note 21, at 622.
\textsuperscript{30} \textit{GILLIGAN, supra} note 21, at 18; \textit{LAWRENCE KOHLBERG, THE PHILOSOPHY OF MORAL DEVELOPMENT: MORAL STAGES AND THE IDEA OF JUSTICE} 409–12 (1981). Two other major leading psychologists had also formulated developmental theories: Jean Piaget and Erik Erikson. \textit{See generally JEAN PIAGET, JUDGMENT AND REASONING IN THE CHILD} (1928); \textit{ERIK ERIKSON, CHILDHOOD AND SOCIETY} (1964). Erikson theorized that there are eight stages of development, beginning almost immediately, for healthy people, with autonomy. \textit{See ERIKSON, supra}, at 42. Piaget’s work focused on the intellectual development of children. \textit{See generally PIAGET, supra}. Gilligan taught psychology at Harvard while working alongside Erik Erikson and Lawrence Kohlberg. \textit{See GILLIGAN, supra}, note 21, at \textit{xiv}.
\textsuperscript{31} \textit{GILLIGAN, supra} note 21, at 18.
found that Kohlberg’s theories worked well with men, but that they failed to address the moral struggles of women.\textsuperscript{32} Using as a starting point Kohlberg’s findings as they applied to men, Gilligan underscored the drastic differences that surfaced when she interviewed women.\textsuperscript{33} Gilligan hypothesized from her study that men mature around an ethic of justice or rights and that women mature around an ethic of care or responsibilities.\textsuperscript{34} Gilligan summarizes her conclusion best as follows:

The moral imperative that emerges repeatedly in interviews with women is an injunction to care, a responsibility to discern and alleviate the “real and recognizable trouble” of this world. For men, the moral imperative appears rather as an injunction to respect the rights of others and thus to protect from interference the rights to life and self-fulfillment. Women’s insistence on care is at first self-critical rather than self-protective, while men initially conceive obligation to others negatively in terms of noninterference.\textsuperscript{35}

Hence, those governed by an ethic of justice have tacit permission to remain frozen in the face of genocide because the injunction is against intervention and interference.\textsuperscript{36}

\section*{A. The Ethic of Justice}

Kohlberg developed his scheme of moral development around his empirical studies of seventy five boys, which focused on an individual’s increasing awareness of individual rights and autonomy.\textsuperscript{37} According to Kohlberg, the first stage of moral development begins with

\textsuperscript{32}Id.

\textsuperscript{33}See id. at xxiii, 22. From one of her interviews, for example, Gilligan finds that her young subject, Amy, sees herself in a different world than the one constructed by Kohlberg. Id. at 30.

\textsuperscript{34}See id. at 62–63, 100.

\textsuperscript{35}Id. at 100.

\textsuperscript{36}See GILLIGAN, supra note 21.

\textsuperscript{37}See KOHLBERG, supra note 30, at 115. For an in-depth discussion of the reasoning behind differences in gender development, see generally NANCY CHODOROW, THE REPRODUCTION OF MOTHERING (1978). In her work, Chodorow theorizes that, since women are generally the primary care givers, masculine identity forms without direct masculine role models. Id. Boys, in order to form their own masculine identity, must separate from their mothers and see their mother as a negative role model for what the boy should become. Id. Forming identity for boys, put another way, means becoming that which the mother is not. Id. Thus, maturity for men entails an achievement of separation, while for women, no separation is necessary. Id.; see also GILLIGAN, supra note 21, at 7–8.
an understanding of morality that is external to the self—rules that authority figures say children must obey. Kohlberg found that as the boys in his study matured, they then began to realize that there is more than one view of morality handed down from authorities, and that since different people have different viewpoints, each is free to pursue his individual interests. In Kohlberg's third stage of moral development, the young men in his study believed that people should live up to family and community expectations and behave in "good" ways. "Good" behavior for those in the third stage means having virtuous motives coupled with interpersonal feelings, such as love, empathy, trust, and concern for others.

Once individuals reach stage four of Kohlberg's moral development, they become more broadly concerned with society as a whole. The emphasis becomes obeying laws, respecting authority, and performing one's duties so that the social order remains intact. Once individuals reach stage five, they begin to question what makes a good society, focusing on which rights a society ought to uphold.

The highest level of moral maturity, according to Kohlberg, is a universal conception of justice, formulated through a sense of hierarchical, universal ethical principals. For those who have developed along this scheme, autonomy is the first impulse. Since autonomy holds such high value under the ethic of justice, reciprocity requires heavy injunctions against interfering with another's rights—unless personal interests are at stake. When solving moral dilemmas, the ethic of justice response consults a set list of priorities that privilege personal interests above the interests of others.

B. The Ethic of Care

Gilligan criticized Kohlberg for neglecting to interview girls for his study, and for applying his findings, based on interviews with boys,
to girls.\textsuperscript{49} While she agreed with Kohlberg's findings as they applied to boys and men, Gilligan hypothesized through her research that a person's moral development could be charted along gender lines.\textsuperscript{50} She found that the ideal of moral maturity for girls is not justice, but a sense of responsibility that includes the self in its web of care.\textsuperscript{51}

Like Kohlberg, Gilligan believes that people develop in stages, yet she theorized that feminine moral development follows a different course.\textsuperscript{52} According to Gilligan, girls begin their moral development by first caring for the self.\textsuperscript{53} In stage two, girls define their previous preoccupation with caring for themselves as selfish.\textsuperscript{54} In the third stage of ethic of care development, girls equate being good with caring for others and self-sacrifice.\textsuperscript{55} In the fourth stage of maturity, women see the illogic of caring for others more than for themselves and begin searching for equilibrium.\textsuperscript{56} Once in the fifth stage of Gilligan's scheme of moral development, women begin focusing on the dynamic of interpersonal relationships and on alleviating the tension between the self and others.\textsuperscript{57} Those in the final stage of Gilligan's model have learned to incorporate themselves into their web of care and find that applying a universal principle of nonviolence—not hurting the self or others—resolves the moral conundrums grappled with in earlier stages.\textsuperscript{58}

Gilligan found that the women in her study resolved moral problems based on each problem's contextual background and defined

\textsuperscript{49} See id. at 18.

\textsuperscript{50} See id. at 138. Some scholars have criticized Gilligan's research for focusing on too select a group of women—those who had already made the decision to consider seriously having an abortion. See \textsc{Joan Tronto}, \textit{A Political Argument for an Ethic of Care} 140 (1991); Jenny Simpson, Feminism at a Generational Crossroads, n.1 at http://www.sfu.ca/-psimpson/crossroads6.htm.

\textsuperscript{51} See \textsc{Gilligan}, \textit{supra} note 21, at 138.

\textsuperscript{52} See id. at 74.

\textsuperscript{53} Id.

\textsuperscript{54} Id.

\textsuperscript{55} Id.

\textsuperscript{56} \textsc{Gilligan}, \textit{supra}, note 21, at 74.

\textsuperscript{57} Id.

\textsuperscript{58} Id. at 74, 149. According to Gilligan, once women have incorporated themselves into their web of care, they learn to value their own well-being as much as the well-being of others. See id. By learning to value their own agency, women are better able to negotiate within a context that gives weight to their own needs. See id. This eliminates feelings of selfishness because women recognize that the standard of care they confer on others, avoiding harm, deserves to be extended to the self as well. See id.
themselves according to their relationships. According to Gilligan, women tend to place themselves "in relation to the world," basing their self-esteem on the quality of their relationships. Because maintaining relationships holds such a high value under the ethic of care, caring for the needs of others is a priority. Thus, when witnessing other people's problems, women, according to Gilligan, tend to feel the problem as their own because they see themselves as interdependent on the relationships of others. Women also tend to judge themselves based on their ability to help others; thus acting to alleviate another's suffering is imperative under an ethic of care.

While under an ethic of justice there exists an injunction against trespassing over another's rights, under an ethic of care model, the injunction is against not acting, or refusing to accept responsibility for fellow humanity. From an ethic of care perspective, maintaining and mending relationships holds tremendous value. Therefore, the more broadly a person defines the scope of her relationships, the greater the payoff in terms of an increased sense of connectivity to others. Unlike the ethic of justice, the ethic of care does not automatically privilege personal rights over another's because, in certain contexts, the other's needs may be more important than individual rights.

C. Law as an Outgrowth of the Ethic of Justice

Anglo-American society has utilized the rights-based ethic of justice as the foundation for its development of law. With autonomy as
one of the most highly prized values of the ethic of justice, sovereignty has become almost synonymous with Statehood. Intervening in another State’s affairs to prevent genocide is not a tenable option, from an ethic of justice perspective, because doing so requires reaching across lines of self-interest into territory beyond the nexus of bystander State rights. Since the ethic of justice focuses on respecting other people’s autonomy and protecting others from interference, such behavior is directly at odds with an ethic of care’s imperative to include others and care for those who need help. By drawing lines around the self and others, the law legitimizes the alienation and autonomy that the ethic of justice takes for granted.

The Anglo-American system of rights-based law essentially draws lines around autonomous citizens and concerns itself with instances in which one individual’s rights infringes upon the rights of another. Such a system is relatively easy to adjudicate because the person whose rights have been violated presumably is motivated to bring action against his or her wrongdoer. States become analogous to autonomous individuals under an ethic of justice where there are clearly drawn lines of territoriality that explicitly govern the points at which each State’s rights begin and end. While these lines have become


70 See U.N. Charter art. 2, para. 4; Krisiotis, supra note 69, at 1008–10; Gallant, supra note 69, at 883; Gomes, supra note 69, at 40; Falk, supra note 69, at 163, 164; Charlesworth et al., supra note 21, at 622.

71 See Gilligan, supra note 21, at 100; Charlesworth et al., supra note 21, at 622.

72 Carrie Menkel-Meadow, What’s Gender Got to Do with It?: The Politics and Morality of an Ethic of Care 22 N.Y.U. Rev. L. & Soc. Change 265, 290 (1996); see also West, supra note 6859, at 8–9, 68; Charlesworth et al., supra note 21, at 622.

73 See Menkel-Meadow, supra note 72, at 290; West, supra note 68, at 8–9, 68; Charlesworth et al., supra, note 21, at 622.

74 See Markovits, supra note 68, at 417–18.

75 See id.; U.N. Charter art. 2, para. 4; Charlesworth et al., supra note 21, at 622; Falk, supra note 69, at 164; Gallant, supra note 69, at 883; Gomes, supra note 69, at 40; Krisiotis, supra note 69, at 1008–10.
more complicated with the advent of global economics, the concept of territorially-defined State rights remains firmly intact. Protecting State sovereignty and a State’s autonomous rights is a deeply held ethic of justice value reflected in countless international treaties. Such reflexive deference to State sovereignty makes thoughts of intervention to prevent genocide seem fraught with legal problems.

II. FROM THE VANTAGE POINT OF AN ETHIC OF CARE: CRITIQUING A RIGHTS-BASED SYSTEM OF LAW PARALYZED IN THE FACE OF GENOCIDE

The ethic of care provides an excellent framework for analyzing the failure of an ethic of justice to prevent genocide. While a rights-based system of law arguably works well domestically, its moral impotence becomes apparent in the face of a genocidal regime. Under an ethic of justice model, bystander countries have no real legal obligation to prevent genocide, nor do they face any legal consequences for standing idly by while genocide occurs. Similarly, governments that perpetrate genocide face no real legal consequences until they have been overthrown.

76 See INTERNATIONAL LAW NORMS, ACTORS, PROCESS: A PROBLEM-ORIENTED APPROACH 334 (Jeffrey L. Dunoff et al. eds., 2002) (stating that, despite the rise in global economic activity, respect for the sovereignty of States remains a guiding principle in international law); see also, e.g., Schooner Exch. v. McFaddon, 11 U.S. 116, 136 (1812) (holding that an armed vessel belonging to Napoleon and found within the territory of American waters could not be claimed by a citizen while at the same time asserting that “[t]he jurisdiction of the nation within its own territory is necessarily exclusive and absolute. It is susceptible of no limitation not imposed by itself.”).


78 See Robin West, Love, Rage and Legal Theory, 1 YALE J.L. & FEMINISM 101, 106 (1989); GILLIGAN, supra note 21, at 100; Menkel-Meadow, supra note 72, at 290.

79 See GILLIGAN, supra note 21, at 100; Menkel-Meadow, supra note 72, at 290; West, supra note 78, at 106. The ethic of justice makes sense for most disputes because the person who was wronged is charged with protecting her own rights and may do so by bringing her claims to court. See Markovits, supra note 68, at 417–18.

80 See Gaer, supra note 6, at 856; Keeler, supra note 6, at 137; Lippman, supra note 6, at 523–24, 527, 529–31, 535.

81 See Gaer, supra note 6, at 856; Keeler, supra note 6, at 137; Lippman, supra note 6, at 523–24, 527, 529–31, 535.
A. The Legal Peril of Genocide Victims

Once a regime turns genocidal, targeted citizens have nowhere to turn in order to have their rights-infringement fairly adjudicated.82 Victims of genocide cannot turn to their government for assistance when their government is the perpetrator.83 Absent the protection of their sovereign State, these citizens-turned-enemies are stripped of the only readily available means of enforcing their rights.84 For bystander States operating from an ethic of justice, there is no imperative to intervene into the internal matters of their genocidal neighbors.85 In fact, because intervention would utilize the bystander States' political, financial, and human resources, States are often unwilling to intervene even when they believe that they have a legal obligation to do so.86 Under the ethic of justice, sacrificing personal rights for the needs of another, no matter how grave, is not a moral imperative unless personal interests are at stake.87

B. The Genocide Convention and an Impotent International Community

When Raphael Lemkin drafted the Genocide Convention,88 he was attempting through multinational treaty to eradicate deference to sovereignty in the face of genocide.89 The Convention declared genocide a crime punishable under international law.90 Since the Conven-

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83 See Falk, supra note 69, at 167; Lippman, supra note 6, at 523–24, 527, 529–31, 535; Steven, supra note 82, at 429.
84 See Gourevitch, supra note 5, at 85–88; Steven, supra note 82, at 429; Falk, supra note 69, at 167.
85 See Power, supra note 1, at 304; Lippman, supra note 6, at 523–24, 527, 529–31, 535; Menkel-Meadow, supra note 72, at 290.
86 See Power, supra note 1, at 304; Lippman, supra note 6, at 523–24, 527, 529–31, 535; Menkel-Meadow, supra note 72, at 290; see, e.g., Colin L. Powell, My American Journey 576 (1995).
87 See Gilligan, supra note 21, at 17; Menkel-Meadow, supra note 72, at 290.
88 Raphael Lemkin coined the term "genocide" and was the sole lobbyist for the international ratification of the Genocide Convention. Power, supra note 1, at 29, 61–63.
89 See id. at 42, 54.

The Convention reads in pertinent part:
tion's unanimous adoption in 1948, its impact has been questionable. The world has since witnessed genocides in Cambodia, Iraq, the former Yugoslavia, and Rwanda. In none of those instances did the international community undertake to prevent escalation of the killing. One explanation for the Convention's failure is that: "genocide is invariably a crime of State, actively perpetrated or condoned by government officials. Thus, barring revolution or coup d'etat, it is highly unlikely that a State will tolerate a prosecution for the very crimes it has affirmatively directed or allowed." Furthermore, there is no provision in the Convention that provides for punishment of bystander States for failing to curb genocidal massacres. The Genocide Convention therefore has no teeth.

Those in power who could have chosen to act in the spirit of the Genocide Convention relied instead upon the ethic of justice to inform their approach to the problem. Caspar Weinberger and Colin Powell, for example, drafted a strict list of requirements that must be

Article I. The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish. Article II. In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (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. Article III. The following acts shall be punishable: (a) Genocide; (b) Conspiracy to commit genocide; (c) Direct and public incitement to commit genocide; (d) Attempt to commit genocide; (e) Complicity in genocide .... Article VIII. Any Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide or any other acts enumerated in article III.

Id. (emphasis added).

91 LEO KUPER, THE PREVENTION OF GENOCIDE 173 (1985); Keeler, supra note 6, at 173.
92 Keeler, supra note 6, at 427.
93 See Keeler, supra note 6, at 137; Lippman, supra note 6, at 523–24, 527, 529–31, 535; Steven, supra note 82, at 427.
94 Steven, supra note 82, at 429; see also Lippman, supra note 6, at 523–24, 527, 529–31, 535.
95 See generally Genocide Convention, supra note 90.
96 See id.
fulfilled before giving authorization for the United States to intervene militarily.\textsuperscript{97} Their list demanded that armed intervention:

(1) be used only to protect the vital interests of the United States or its allies;
(2) be carried out wholeheartedly, with the clear intention of winning;
(3) be in pursuit of clearly defined political and military objectives;
(4) be accompanied by widespread public and congressional support; and (5) be waged only as a last resort.\textsuperscript{98}

Moreover, Colin Powell restricted this list further by adding the requirement that the use of force be "decisive" and be carried out with a "clear exit strategy."\textsuperscript{99} Such a hierarchical ordering of values that privileges a State's "personal" objectives reflects the values of an ethic of justice, in which personal rights trump the needs of another.\textsuperscript{100} The conservative nature of this list, bent on making military intervention a "last resort," clearly restricts affirmative action in response to genocide or other humanitarian crises.\textsuperscript{101} In a situation in which a foreign State is perpetrating genocide on its inhabitants, the list drafted by Weinberger and Powell would approve of intervention only in the most limited of circumstances in which the genocide impacts American profit or pleasure.\textsuperscript{102} Such an outcome would be unconscionable under an ethic of care.\textsuperscript{103}

\textsuperscript{97} Power, supra note 1, at 261–62; Casper W. Weinberger, Excerpts from the Address of Weinberger, N.Y. Times, Nov. 29, 1984, at A5.
\textsuperscript{98} Power, supra note 1, at 262; Powell, supra note 86, at 149; Weinberger, supra note 97, at A5.
\textsuperscript{99} Power, supra note 1, at 262; Powell, supra note 86, at 149.
\textsuperscript{100} See Gilligan, supra note 21, at 36–37 (explaining a fundamental concept of the ethic of justice—prioritizing the needs of the self—by analyzing statements made by young Jake); see also Michael Ignatieff, The Needs of Strangers 29 (1985) (discussing the needs of strangers whose needs remain unmet due in large part to the current legal, governmental structure, which neglects the needs of outsiders).
\textsuperscript{101} Weinberger, supra note 97, at A5.
\textsuperscript{102} See Power, supra note 1, at 262; Powell, supra note 86, at 149; Weinberger, supra note 97, at A5.
\textsuperscript{103} See Gilligan, supra note 21, at 99, 104–05.
III. SHIFTING PERSPECTIVES TO AN ETHIC OF CARE REFOCUSES THE “PROBLEM FROM HELL”

From an ethic of care perspective, there are numerous options available to prevent genocide.\(^{104}\) Operating from an ethic of care framework, the first question those in power must ask themselves is, "What have I done, directly or indirectly, to assist those who wish to perpetrate genocide?"\(^{105}\) By first finding fault with the self, the questioner then takes on a high level of personal responsibility for genocidal regimes as they unfold.\(^{106}\) Taking personal responsibility means weaving the victims of genocide into a broadening web of care, in which a person with the capacity to help sees the safeguarding of genocide victims as vital to her own sense of well-being.\(^{107}\)

In this way, Power herself is operating from an ethic of care perspective as she frames the argument of her book.\(^{108}\) By forcing readers to see how the United States has directly or indirectly assisted genocidal regimes, she asks her readers to see those instances as opportunities embarrassingly wasted.\(^{109}\) "We have all been bystanders to genocide," she points out in her preface.\(^{110}\) If we were all operating from an ethic of care, that recognition of shirked responsibility would be enough to mobilize a more activist response to genocide.\(^{111}\)

From the perspective of an ethic of care, almost no personal right provides a sufficient excuse for failing to intervene to stop genocide.\(^{112}\) The ethic of care views the intentional harming of others as the worst possible crime.\(^{113}\) The second worst moral infraction is giving tacit approval for such crimes by doing nothing and excluding

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\(^{104}\) See generally Power, supra note 1. Throughout her book, Power lists possible actions that the United States could have undertaken to alleviate the threat of genocide or to stop genocides once they had begun. Id; see also Gilligan, supra note 21, at 17, 51, 100; West, supra note 78, at 106.

\(^{105}\) See Gilligan, supra note 21, at 99, 104-05.

\(^{106}\) See id.

\(^{107}\) See id., at 63; Menkel-Meadow, supra note 72, at 290.

\(^{108}\) See Power, supra note 1, at XVII; Gilligan, supra note 21, at 29.

\(^{109}\) See Power, supra note 1, at XVII; Gilligan, supra note 21, at 147; Ignatieff, supra note 100, at 141.

\(^{110}\) Power, supra note 1, at XVII.

\(^{111}\) See Gilligan, supra note 21, at 62-63; West, supra note 78, at 106; Moorhead Wright, An Ethic of Responsibility, in The Community of States 165 (James Mayall ed., 1982).

\(^{112}\) See Gilligan, supra note 21, at 100; West, supra note 78, at 106-107; Menkel-Meadow, supra note 72, at 293; West, supra note 68, at 69; Marilyn Friedman, Feminism and Modern Friendship: Dislocating the Community, 99 Ethics 275, 277-81.

\(^{113}\) See Gilligan, supra note 21, at 65, 100, 149.
those in need from the web of care. The ethic of care teaches society that it must act when it can, and that the moral conundrum is not whether to act, but how to act.

There is only one example of the United States intervening to prevent genocide: Kosovo. Senior officials in the Clinton administration with fresh memories of Bosnia and Rwanda, both genocides that occurred during Clinton’s presidency, reacted swiftly when they learned about atrocities in Racak. There, in 1999, Serb forces spent three days pummeling the small town of Racak with artillery fire. After the onslaught, Serb forces rounded up and executed the forty-five remaining citizens of Racak, leaving their bodies face down in a ravine. Within twenty-four hours, American Ambassador William Walker inspected the crime scene. Walker saw decapitated corpses and that the majority of the Serb’s victims were either elderly or children.

Already intent on stopping Milosevic, and bruised by memories of Bosnia and Rwanda, the United States and its European allies presented a “take-it-or-leave-it proposal” in France. The proposal from the allies required that Belgrade remove the majority of its troops from Kosovo, grant autonomy to the Albanians, and allow for the deployment of 25,000 armed peacekeepers to Serbia. Refusal on the part of the Serbs would mean bombing from NATO. The Serbs refused, and the bombing that ensued in March of 1999 continued until Milosevic accepted the compromise drafted in France.

The international community’s swift response is informative for a number of reasons. First, the initiative sprung from American leadership. Second, and perhaps most importantly, it was the first time an administration had learned from its previous mistakes of apathy in the face of genocide and instead adopted an ethic of responsibility/care

114 See id., at 50–51; Ignatieff, supra note 100, at 28–30, 141.
115 See Gilligan, supra note 21, at 50–51; Ignatieff, supra note 100, at 28–30, 141.
116 Power, supra note 1, at 447.
117 Id. at 447–48.
118 Id. at 447.
119 Id.
120 Id.
121 Power, supra note 1, at 447.
122 Id.
123 Id.
124 Id. at 448.
125 Id.
126 See Power, supra note 1, at 448.
to govern its response.\textsuperscript{127} The Clinton administration had to grapple with their shame at having done nothing as genocide in Rwanda raged unchecked.\textsuperscript{128} Hopefully, future administrations will not need to witness two genocides first-hand before feeling compelled to act in order to prevent a third.\textsuperscript{129}

**Conclusion**

In her book, "A Problem from Hell": America and the Age of Genocide, Samantha Power argues that America has failed to respond to the major genocides of this century because of our collective inability to fathom something so evil.\textsuperscript{130} Power's contention that America's failure to prevent genocide is a failure of imagination is not without merit. Human nature perpetually turns away from events so horrible as to defy comprehension.\textsuperscript{131} However, for those who wield power in this country and who are in a position to "do something" to stop genocide, such an explanation makes little sense; the ability to do something substantive to thwart genocide obviates the need to flee from its reality.\textsuperscript{132} American leaders have understood what was taking place; they simply lacked the will to do anything about it.\textsuperscript{133} Relying on the apathy and misinformation of citizens, Washington is able to preoccupy itself with its own perpetuation and little more.\textsuperscript{134} Politicians also rely on the fact that they typically do not face repercussions for failing to act.\textsuperscript{135} Their worry instead is how public opinion will view the moments in which they have chosen a path of action.\textsuperscript{136} From an ethic of justice standpoint, it is not surprising that politicians find safe haven

\textsuperscript{127} See id.
\textsuperscript{128} See id. at 386. President Clinton visited Rwanda in 1998 and said the following to Rwandans who were gathered at the airport to hear him:

We in the United States and the world community did not do as much as we could have and should have done to try to limit what occurred. It may seem strange to you here, but all over the world there were people like me sitting in offices, day after day, who did not fully appreciate the depth and speed with which you were being engulfed by unimaginable terror.

\textit{Id.}

\textsuperscript{129} See id.
\textsuperscript{130} See id. at XVII–XVIII.
\textsuperscript{131} See Power, supra note 1, at XVII–XVIII.
\textsuperscript{132} See id. at 173, 359.
\textsuperscript{133} See id. at 508–10.
\textsuperscript{134} James Walcott, *What if They Gave a War and Nobody Cared?*, VANITY FAIR, Mar. 2003, at 160.
\textsuperscript{135} See Power, supra note 1, at 366.
\textsuperscript{136} See id.
through inaction. According to this view, they have made no moral choice, so there can be nothing to judge. From an ethic of care perspective, however, the decision not to act is still a decision, and one fraught with moral failure.137 As John Paul Sartre once noted, even a non-choice is a choice.138 It is more often the case that non-choices cause the greatest harm.139

What will it take for politicians and citizens to shift perspectives from an ethic of justice to an ethic of care?140 Perhaps part of the answer is to bring the suffering of others closer to the American experience.141 In this respect, perhaps Powers was on to something significant.142 One way to combat the self-interest of those in power is to address the electorate's failure to comprehend the suffering of others, thereby influencing those in power to take a more activist approach in response to genocide.143 In one attempt to combat this failure of imagination, Power employs an ethic of care tactic—personalizing the victim's stories—so that we might be able to wrap our minds around their humanity and suffering.144 At the beginning of her chapter on Cambodia, for example, Power includes a haunting photograph of a woman holding her baby moments before they were murdered.145 The woman stares straight at the camera with a mixture of incredulity, rage and despair, practically screaming at her observers to recognize her humanity.146 If the majority of American citizens were operating from an ethic of care and felt that they had a significant voice, such images of outrage and hopelessness would inspire greater demands of American leadership.147 For the time being, perhaps the best means of inspiring responses to outbreaks of genocide is through haunting stories and images, like those of a river in Rwanda running

137 See Gilligan, supra note 21, at 31.
139 See id.
140 See Power, supra note 1, at 86; Gilligan, supra note 21, at 29; Ignatieff, supra note 100, at 43; West, supra note 78, at 106–07.
141 See Power, supra note 1, at 86; Gilligan, supra note 21, at 29; Ignatieff, supra note 100, at 43; West, supra note 78, at 106–07.
142 See Power, supra note 1, at 86.
143 See id.; Gilligan, supra note 21, at 29; Ignatieff, supra note 100, at 43; West, supra note 78, at 106–07.
144 See Power, supra note 1, at 86; Gilligan, supra note 21, at 29; Ignatieff, supra note 100, at 43; West, supra note 78, at 106–07.
145 Power, supra note 1, at 86.
146 See id.
147 See id., at XVII; Gilligan, supra note 21, at 29; Ignatieff, supra note 100, at 43; West, supra note 78, at 106–07.
with blood, piles of corpses piled on roadsides, and mothers screaming at cameras for some human recognition. If such stimuli do not result in immediate activism, at the very least, exposure to the tragedies of others will leave its audience discomforted by their inertia. Perhaps this discomfort might eventually ripen into a perspective similar to the ethic of care and result in broadening demands of American politicians.

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148 See Power, \textit{supra} note 1, at 86; Gilligan, \textit{supra} note 21, at 29; Ignatieff, \textit{supra} note 100, at 43; West, \textit{supra} note 78, at 106–07.

149 See Power, \textit{supra} note 1, at XVII; Gilligan, \textit{supra} note 21, at 29; Ignatieff, \textit{supra} note 100, at 43; West, \textit{supra} note 78, at 106–07.

150 See Power, \textit{supra} note 1, at XVII; Gilligan, \textit{supra} note 21, at 29; Ignatieff, \textit{supra} note 100, at 43; West, \textit{supra} note 78, at 106–07.