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Leviathan'S Rage: State Sovereignty And Crimes Against Humanity In The Late Twentieth Century

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LEVIATHAN'S RAGE:
STATE SOVEREIGNTY AND CRIMES AGAINST HUMANITY
IN THE LATE TWENTIETH CENTURY

A Dissertation Presented

by

CECIL BRYANT LAWSON

Submitted to the Graduate School of the
University of Massachusetts in partial fulfillment
of the requirements for the degree of

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DEDICATION

To the memory of my wife

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I would like to thank my committee chair, Roberto Alejandro, for his guidance, patience, and always thoughtful comments along the way. I would also like to thank the other members of my committee, M. J. Peterson and Joan Cocks, for their equally important contributions to this dissertation. Thanks are also due to Patricia J. Mills, Nicholas Xenos, former committee chairs, and to Eric Reeves, former outside reader, who helped me to figure out the proper direction for this dissertation. This was truly a team effort.

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ABSTRACT

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IN THE LATE TWENTIETH CENTURY

FEBRUARY 2009

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This dissertation explores the relationship between state sovereignty and major instances of crimes against humanity committed in the latter 20th century. In order to examine this dynamics of this relationship, the author analyzes the history and theory of the concept of sovereignty and examines five case studies of crimes against humanity: Cambodia under the Khmer Rouge, Argentina during the military *junta* from 1976 to 1983, the breakup of the former Yugoslavia, Rwanda in 1994, and the ongoing conflict in the Darfur region of Sudan. State sovereign power is shown to be an important facilitating factor in these atrocities as well as a major source of contention during the civil conflicts in which these crimes have taken place. International efforts to control or mitigate the damaging effects of state sovereignty, including humanitarian intervention, the International Criminal Court, and the promotion of democratization, are shown to be largely ineffectual and often end up strengthening state sovereignty.

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CHAPTER 1

INTRODUCTION

While it may seem like I am stating the obvious, we need to ponder this: large-scale crimes against humanity have become a common occurrence within my own lifetime (I was born in 1971). Over past few decades, we have witnessed the last paroxysms of the Cold War – détente, renewed conflict with the “Evil Empire,” the fall of the Berlin Wall, and the dissolution of the Soviet Union and its satellite allies; the rise of a “new world order,” heralding globalization and a new respect for international law; and another descent into global conflict following the 2001 terrorist attacks on the United States. While the earlier events might have been a cause for some optimism in world politics, it instead turned into a period of horror and sadness. Although instances of crimes against humanity took place all throughout the decades prior to the 1990s, the ideological conflict of the Cold War did much to obscure the murder that happened; the global conflict between capitalism and communism seemed to figure at the very least into the atrocities that took place throughout the 1970s and 1980s in Central and South America and Southern Asia. With the passing of the Cold War, however, these crimes continued and were more preminent in an ever-increasing number of locales around the world. Western nations and prominent members of the United Nations stood by as governments openly repressed, tortured and killed millions of their own citizens, in the

name of national unity or to stifle political dissent. This unwillingness to act, to intervene, was always followed by condemnations after the fact, always too late.

This in itself should tell us something about the nature of these kinds of crimes – their occurrence transcends ideological conflict, nationalism, or authoritarianism, and their scale, in fact, is made possible by the modern state. We know that genocide and atrocities do not take place in a social and political vacuum; at least since the Second World War, we have learned to see how ethnic individuals’ hatred and authoritarianism have used the means of the state to carry out crimes against humanity, how those hatreds are provoked and sustained, and how the control of information in a political regime distorts public perspectives. The murder of 6 million Jews, Gypsies, Slaves, and other minorities in World War Two by the Nazis in Germany should have been enough of a lesson for the people of the world in how genocide gets carried out, or even for a generation before that, with the slaughter of the Armenians in Turkey during the First World War.¹ The world community proclaimed, “Never again.” It erected the edifice of the United Nations with a Universal Declaration of Human Rights, passed a convention on genocide in 1948 as well as various conventions against torture, the persecution of minorities, and the ill treatment of women and children.²

¹ The Armenian genocide, unlike the Holocaust was reported around the world while it was being undertaken, although the term “genocide” had yet to be coined. See Arnold Toynbee, ed. *The Treatment of Armenians in the Ottoman Empire, 1915-1916* (London, 1916); Arnold Toynbee, *Armenian Atrocities: The Murder of a Nation* (London, 1915); Leslie Davis, *The Slaughterhouse Province: An American Diplomat’s Report on the Armenian Genocide, 1915-1917*, ed. Susan K. Blair (New Rochelle, 1989); Henry Morgenthau, *Ambassador Morgenthau’s Story* (1918); Isreal Charny et al. eds., *Encyclopedia of Genocide* (1999).

² Universal Declaration of Human Rights (1948); Convention on the Prevention and Punishment of the Crime of Genocide (1948); International Convention on the Elimination of All Forms of Racial Discrimination (1965); International Covenant on Civil and Political Rights (1966); International Covenant on Economic, Social, and Cultural Rights (1966); Convention on the Elimination of All Forms of Discrimination against Women (1979); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984); Convention on the Rights of the Child (1989); and Declaration on the Rights of Persons Belonging to National or Ethnic, Religious, and Linguistic Minorities (1992).

However, the world community's actions tell a different story. Nonintervention has been the practice *and* the rule of international law, and it is a foundation of modern world politics.³ World leaders may wring their hands while genocide is taking place, but there is legally⁴ no course of action at the international level,⁵ and several centuries of international custom have made it acceptable to look down on one nation interfering with the internal affairs of another. Thus, while we may cite motives such as national self-interest or apathy as reasons why nations generally refuse to intervene in order to stop genocide, the more fundamental reason, it seems, lies in the structure of modern international relations, i.e. in the principle of sovereignty.

In this dissertation, I want to explore the degree to which state sovereignty is implicated in the occurrence of crimes against humanity in the late 20th and early 21st

³ In Articles 2 (4) and 2 (7) of the United Nations Charter, the principle of non-intervention is invoked as contrary to the purpose of the United Nations: 2 (4) "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations," and 2 (7) "Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter, but this principle shall not prejudice the application of enforcement measures under Chapter VII [which deals with the enforcement of UN Security Council resolutions in relation to breaches of the peace and acts of aggression against other nations]." The principle of non-intervention was codified subsequently in the Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States, G. A. Res. 2131/20, 1965; the Declaration on the Principles of International Law, G. A. Res. 2625/25, 1970; and in the Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States, G. A. Res. 36/103, 1981. For the application of the principle of non-intervention in cases of international law, see the Corfu Channel case (1949), ICJ Reports, 16 ILR, and the Nicaragua case (1986), ICJ Reports, 76 ILR.

⁴ Article VIII of the Genocide Convention states that, "Any Contracting Party may call upon the competent organs of the United Nations to take such actions under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide." In other words, signatories to the Convention have to take action through the United Nations bureaucracy in order to have their concerns legally recognized.

⁵ The idea of "humanitarian intervention" gained a certain hearing in the 1990s with the crises in Somalia, Haiti, and Kosovo. However, in order to be acceptable within the legal structure of international sovereignty, the United Nations had to construct a concept of humanitarian intervention which took into account the fact that the sovereignty of surrounding nations was being affected by civil conflict and/or refugee flows. See U. N. Resolutions 713 (1991) in relation to the former Yugoslavia and Resolutions 733 (1992) for Somalia and 688 (1991) in Iraq. This idea of humanitarian intervention has been given a different footing under the doctrine of "Responsibility to Protect," which will be explained in Chapter Five.

centuries. The term “national sovereignty” has had several centuries of usage and has become a commonplace expression at the beginning of the 21st century. Both contemporary international law and the United Nations are built upon a respect for “national sovereignty.” It is recognized that international law and all treaties, agreements, and alliances are based on the consent of the nations involved; if a nation chooses to back out of any of the above, it may do so (it may not earn the good will of the other nations party to them, but that is not the issue here). Today, nations continue to want to strengthen their sovereignty,⁶ and ambitious nations want to assert theirs, but the central concern remains the issue of sovereignty itself. What does sovereignty mean? In the context of modern political theory, sovereignty means the most powerful legitimate authority within a political community, that power which has the final word on matters of law and enforcement. In the context of international relations, it refers to the ability of a nation-state to determine its own decisions and actions. Taken in its totality, the concept of sovereignty has two sides: one in relation to other nation-states, and the other in relation to itself – it is concerned with the boundary between outside and inside. While international law determines the legal boundaries of a country, it ultimately falls to sovereign authority to decide what is outside and what is inside, and more importantly, *who* is inside and outside.

It is the nexus between political theory and international relations that I am going to examine in order to more fully understand sovereignty; I am going to bring insights

⁶ Recent debate on national sovereignty has focused on the “decline” of sovereignty in the era of globalization; for the most comprehensive treatments of this issue, see Held, David; McGraw, Anthony; Goldblatt, David; and Perraton, Jonathan, *Global Transformations* (Stanford, 1999: Stanford University Press), Gilpin, Robert, *The Challenge of Global Capitalism: The World Economy in the 21st Century* (Princeton, 2001: Princeton University Press), and Sassen, Saskia, *Losing Control: Sovereignty in an Age of Globalization* (New York, 1996: Columbia University Press)

from political theory regarding the relations between citizens and governments into international relations and bring insights from international relations regarding the unitary nature of sovereign power into political theory. Speculation upon this line between inside and outside shows us that this line is moveable, due to war, internal conflict, and changes in national law. It cannot be overstated, however, that this concerns not merely national boundaries (although geography is a crucial element of sovereignty) but is more generally about belonging, the collective sense of what is “ours” and what is “theirs”. At its most fundamental levels, sovereignty is about identity.

In the first chapter, I am going to introduce a history of the concept of sovereignty, beginning in Europe’s Middle Ages. The purpose of this is to show that sovereignty is not an eternal category of political authority but rather the outcome of an historical political conflict among a number of authorities claiming ultimate authority over the others. The medieval Christian Church and its protector, the Holy Roman Empire, stood at odds with one another from the beginnings of the empire in the 9th century. By the late Middle Ages, feudal relations were breaking down and consolidating under a number of powerful national monarchs, and this created yet another source of authority within the conflict. The waning of both the power of the Church and the Holy Roman Empire left a number of monarchs and their national states with the claim to supreme political authority over their territories and populations. As these countries began to extend their influence through colonization, the idea of sovereignty spread across the world and become the dominant mode of conceptualizing the authority of the state in the contemporary world.

Since sovereignty retains in the predominant status, in the second chapter I return to the early modern period and examine the ways in which sovereignty was theorized. Sovereignty essentially moves along an axis between two poles, which I call monarchical and popular. I examine the development of monarchical sovereignty in the works of Jean Bodin, Hugo Grotius, and Thomas Hobbes. Monarchical sovereignty is initially formulated as being limited by ideas of natural law and natural right, but in its operation, it remains essentially unfettered. By the 17th and 18th centuries, a constitutional revolution takes place in Europe which moves the concept of sovereignty along the axis toward popular rule; supreme authority is said to lie in the people themselves. However, I demonstrate that there remains the same formal idea of a power, once instituted, which remains unaccountable, especially in national emergencies. The Italian philosopher Giorgio Agamben argues that this is the essential nature of sovereign power; it remains outside of the limits which seek to bind it.

In the next section of the dissertation is a series of five case studies in which I explore the implications of this concept of sovereignty in the late 20th and early 21st centuries. In the countries of Cambodia, Argentina, Yugoslavia, Rwanda, and Sudan, crimes against humanity have been committed against broad segments of their own populations; I will examine the degree to which political authority claiming sovereignty is implicated in each set of crimes. By way of contrast, I will also examine the role played by each country's political culture in these crimes. In my conclusions to these case studies, I will show that, apart from the motivations behind the crimes committed, state authority and the state's institutions were implicated to a very high degree, and that political culture itself can fall within the concept of sovereignty.

In the last chapter, I will turn to an examination of the ways in which sovereignty may be modified and/or challenged as a way to prevent future large-scale crimes against humanity. I will look at the role of humanitarian military intervention as a preventative measure; the International Criminal Court as an institution that does away impunity for these crimes; and the process of democratization around the world as a long-term means of creating political environments that value human rights. I conclude that these measures, while important for curbing future atrocities, only wind up recreating sovereign authority at the national level; they do not limit the abuses inherent in sovereign authority itself. Until humanity is able to come up with a way of insuring protection of basic human rights outside of a context of absolute control over the means of violence, sovereignty will remain with us, with all of its dangers.

Because I am trying to make connections across several areas of the social sciences – including political theory, international relations, comparative politics, and history – this dissertation will sacrifice much depth for breadth. My treatments of the different subject matters will undoubtedly not impress specialists in each of those fields, but I hope that that my arguments will open doors for futures areas of research. Understanding the role played by sovereign authority in the commission and justification of crimes against humanity remains a central task in creating a more just, more secure, and more humane world.

CHAPTER 2

RISE OF LEVIATHAN

In order to understand the dynamics of sovereignty, the first step I want to take is to show how the concept of sovereignty came into existence. Sovereignty, like all concepts, has a history, but the success of the institutions of sovereignty in the contemporary world tends to obscure rather than elucidate the understanding of sovereignty. The Peace of Westphalia in 1648 is usually regarded as the “beginning” of the modern sovereign state. However, prior to this date, a number of historical events had already taken place which laid the foundation for sovereign political authority, and developments would continue after 1648 to ensure that the sovereign idea became the dominant model of political authority by the end of the 20th century.

Thus, I think it is necessary to create an historical narrative of the origins of the concept of sovereignty. Sovereignty had its beginnings in the Middle Ages in the debates between Church, Holy Roman Empire, and national monarchs over political primacy on the European continent. While the Church and the Empire, often linked and also often at odds with each other, claimed symbolic primacy in the temporal world, it was the local feudal lords, and eventually, the national monarchs, who ended up with military and political control over their populations and territories by the end of the Middle Ages. Using theological concepts to legitimate their rule, national kingship was transformed into sovereign authority. The development of state bureaucracy in the early years of the Modern era borrowed these same legitimating ideas for what was largely a matter of secular administration. Finally, through colonial expansion, the idea of sovereignty was

spread throughout the entire world, laying the foundations for its eventual predominance in world affairs.

The Political Foundations of European Christendom

In 313 C.E., the Roman Emperor Constantine officially recognized Christianity, and seventeen years later, he moved the administrative center of the Empire east to Constantinople, an event which is generally regarded as the advent of the Byzantine Empire. During the following century, Byzantium began to lose its control over the Roman territories of Western Europe after a series of invasions by Germanic peoples into the heart of the Italian peninsula. Much of subsequent Byzantine foreign policy focused on regaining control over this region.⁷ At no point had relations between the two regions been particularly close. While a number of ecumenical councils of Western and Eastern Church officials in the early Middle Ages attempted to maintain ritual and doctrinal unity within the realm of Christendom, centuries of growing geographic, linguistic, and ideological separation eventually led to two separate and competing domains of Christendom.⁸

Traditionally within Christendom, the Bishop of Rome was considered *primate*, first among equals. From the fifth to the early thirteenth centuries, the Pope struggled with the lack of recognition of this role by Byzantium.⁹ As the last remaining outposts of imperial rule in Western Europe succumbed to the Germanic invasions, and the Patriarch of Constantinople rose in prominence and power in the eastern empire, the Bishop of

⁷ Walter Ullmann, *Medieval Political Thought* (Baltimore: Penguin, 1975), 72

⁸ John Julius Norwich, *Byzantium: The Early Centuries* (New York: Knopf, 1989), 120

⁹ Ullmann, 96-7

Rome began to assert that he could appoint an emperor in the west, and this signaled a different kind of power to Eastern Christians.¹⁰ Around the year 750, there appeared in Rome a forged document, *The Donation of Constantine*, which claimed to have been written by the Emperor Constantine himself, which stated that he had merely "retired" to the Byzantine capital and left the crown for the Pope to bestow on the next emperor of the Romans.¹¹

In the wake of this growing rift between Western and Eastern Christendom, a "siege mentality" developed in the West in the 8th and 9th centuries, as the European continent came under further invasions: the Islamic caliphs into the Iberian Peninsula; the Norsemen, the Slavs and the Magyars from the east; unfriendly Christian kings in western France; and hostility from princes in northern Italy. It fell upon the papally-appointed emperor to organize the defenses of Western Christendom against these invasions.¹² In the late 8th century, Pope Leo III led the coronation of Charlemagne as "Emperor of the Romans." Later, the papacy turned to the German kings as protectors of Western Christendom, and potentially, as instruments of the Pope's power. Once the authority of Western Christendom was consolidated in the Bishop of Rome, separate from the authority of Constantinople - made official with the mutual excommunication between Pope Leo IX and Patriarch Michael I in 1054 - the papacy then began to establish its authority in relation to the rulers within its own domain.

As the earlier Germanic invaders had settled throughout Western Europe, they began to convert to Christianity. At the same time, their focus was not on the role

¹⁰ Ullmann, 77

¹¹ Norwich, 119

¹² Harold J. Berman, *Law and Revolution: The Formation of the Western Legal Tradition* (Cambridge, Mass.: Harvard University Press, 1983), 100-1

emperor, who to them was just another local ruler. They acknowledged the authority of the Bishop of Rome, but the idea of a united European empire faded from their concern. This loose network of local kingdoms and authorities developed their own political and religious institutions, influenced by Christianity and by local custom. They looked to their elders, folk custom, and tribal leaders for their immediate protection and the maintenance of social order. Isolated from the Church and from the office of the Emperor, this situation provided an opportunity for the development of the law of the king, which began to evolve alongside the already-existing law of the community.¹³ These separate communities passed beyond a tribal stage of social development, with the ruler governing as a representative of the community and so being bound by the community's sense of justice.¹⁴ This network of custom and traditions within these communities allowed people to assert their rights and privileges against those of the ruler; these arrangements came to be regularized under the spread of feudal and manorial relations throughout Western Europe. Through the influence of Christianity, the authority of local rulers was viewed as an extension of the authority of God and the Church; the need for governance was seen to be a result of humanity's fallen nature, in need of tending and guidance. Because of the heritage of the Roman Empire, all rulers were looked upon as divine, or taking on divine qualities, *consecratio*.¹⁵ Because of the Christian heritage, rulers were viewed as *Rex Gratia*, king by the grace of God, and as "vicar of Christ," God's regent on earth.¹⁶

¹³ In a few centuries, it would eclipse the law of the community in the guise of monarchical absolutism.

¹⁴ F. H. Hinsley, *Sovereignty* 2nd ed. (New York: Cambridge University Press, 1986), 107

¹⁵ This was reflected in coronation rites, which were developed in the 9th century throughout Western Europe in the wake of the Carolingian Empire; see Ernst H. Kantorowicz, *The King's Two Bodies: A Study in Medieval Political Theology* (Princeton, N. J.: Princeton University Press, 1997), 89-92

¹⁶ Also known as "sacral kingship," in Kantorowicz.

This tension between the Germanic ideal of kingship and the Christian ideal was never resolved,¹⁷ but as suggested above, the line between secular and ecclesiastical authority was not sharply drawn. The Western Church had adopted the political structure of imperial Rome; imperial Rome had had its own set of religious legitimations and functions, whose trappings the Church had also variously ignored and incorporated.¹⁸ Pepin, king of the Franks, agreed to be protector of the Romans after meeting with Pope Stephen II in 754, consecrating his service to the papacy. His grandson, Charlemagne, declared himself "Rector of Europe" and cast his rule in theocratic terms. A century and half later, the Ottonian kings of Germany¹⁹ assumed leadership of their local churches through a proprietary system, in which bishops were treated as princes of the empire and as such secured privileges, becoming feudal lords over their districts.

These political and institutional developments were followed by wide-sweeping changes in the socio-economic conditions in the 10th and 11th centuries. This was a period of economic development, with the introduction of new technologies and new methods of cultivation, which in turn led to agricultural surpluses that supported both a general increase in the population of Western Europe and an increase in trade and merchant activity. These last two developments were central in the growth of urban centers, the rise of a merchant class, fairs and markets, credit, banking, insurance, and the growth of handicrafts and crafts guilds.

The Papal Revolution

¹⁷ Ullmann, 55-6

¹⁸ The Eastern Church, on the other hand, remained openly subordinate to the Byzantine Emperor, which kept alive the older practice of Roman emperorship.

¹⁹ beginning with Otto of Saxony, who was named *imperator* and *augustus* by Pope John XII in 962

The 9th century was a period of renewed piety within the Church, and this was given institutional form with the founding of the Clunaic system of monasteries in France. The initial aim of the reformers was to end the inter-related practices of the purchase of clerical offices, clerical marriage (and the problem of clergy fathering children in and out of wedlock), and the influence of local barons in the selection of bishops. Once these reforms were set in motion, a more fundamental set of questions emerged: if church offices were not inheritable and could not be purchased, could their appointment be left in lay hands? Were kings and lords qualified to make what would be a large number of appointments of bishops and priests once the latter were no longer allowed to marry and have heirs? Until this point in Western history, the Church retained the right to appoint its own officials, but in actual practice, local rulers under customary authority could *invest* bishops and priests with their offices.

The Church's first act against investiture was at the Synod of Reims in 1049 and was followed by similar acts in subsequent decades. This initially caused conflict with the Emperor and the Pope's Norman allies, leading to the ignominious sack of Rome in 1084. In its conflicts with King Henry II of England and Emperor Henry VI of Germany, the Papacy was not able fully to establish its supremacy over issues of investiture, but it did secure a number of advantages for the Church in the long run. In the Concordats of Bec (1107) and of Worms (1122), which brought the Investiture Controversy to a resolution, the Pope was able to insist that: 1) the future ordination of clergy would require his approval; 2) he would establish the functions and powers of clerical officials; 3) rulers could not create new bishoprics, divide or suppress old ones, or transfer or dispose of bishops; 4) the Pope would become the principal dispenser of all Church

property; 5) he was supreme in all matters of worship and belief; 6) he could grant absolution of grave sins, canonize saints, and distribute indulgences; 7) he was able to summon church councils, preside over them, and declare their decisions official; 8) he would issue *decretals* to settle Church controversies; 9) he was the supreme legislator and interpreter of the law; 10) the papal court was the court of appeal of all Christendom and has jurisdiction over all cases submitted to it by anyone.²⁰

Many of these aims were first articulated in a document attributed to Pope Gregory VII, the *Dictatus Papae*, in 1075. In this list of twenty-seven propositions, the Pope set forth his jurisdiction as God's sole human representative on earth, described later as fullness of power, or *plenitudo potestas*. This was an important part of the worldview shared by the Church reformers, as the secular world (the *saeculum*, the world of time and human history, and *mundus*, the material world, in contrast with *aeternitas*, eternity, and *ecclesia*, the Church)²¹ was in need of reform and guidance, which was to be carried out through the proper administration of the sacraments²² and the further institutional establishment of the authority of the Church.²³

The Church slowly undertook this monumental, if not ultimately impossible, task of governing the entire secular world within Christendom. It sought to establish itself as an independent, self-conscious identity, as the supreme institution from which flowed the power of kings and princes. The Pope ruled Christendom as an inheritance of Saint Peter, while the Emperor (and by extension, all kings) ruled by delegation from the Pope. During this time, the Pope began to see himself as the chief prince of the Christian

²⁰ Berman, 98-9

²¹ *ibid.*, 112

²² *ibid.*, 174

²³ Norman F. Cantor, *The Civilization of the Middle Ages: A Completely Revised and Expanded Edition of 'Medieval History: The Life and Death of a Civilization'* (New York: Harper Collins, 1993), 245

polity,²⁴ and he began to refer to himself as "the vicar of Christ", taking the title from the emperor.²⁵ Similar statements made by later Popes sought to define the supremacy of the Papacy in relation to worldly rulers and the reach of the Pope's powers. Innocent III's bulls *Quanto personam* and *Per venerabilis* (both 1202) created important distinctions between the Pope's ordinary powers of office and his powers as vicar of Christ.²⁶ Boniface VIII's *Unam sanctum* (1302) asserted the supremacy of his powers in relation to those of worldly kings.

The Church went about this wholesale reordering of the social and political life of Western Europe. In order to carry out this mission, it created an enormous bureaucracy, whose jurisdiction would come to straddle both secular and ecclesiastical realms.²⁷ There was also a great need for a coherent body of laws, and the Church supported efforts at systematization of canon law and civil law.

In no European country in 1100, and not even in the church, was there anything approaching a comprehensive and organized legal system. In attempts to assert their authority in society and to provide a measure of order and justice, the secular governments of Western Europe were hampered by limitations of and conflict among the various German customary legal traditions. In Mediterranean countries Germanic legal procedures and principles further clashed with debased fragments of the much more sophisticated Roman legal system. In northern France and England feudal law presented yet another group of competing juristic traditions. A new political order and the slow shift toward a money economy demanded legal rationalization and codification.²⁸

The private efforts of individuals such as Ivo of Chartres (1040-1116) and Irenius (1066-1125) paved the way for the codification of law, particularly Gratian's organization of canon law in the *Decretum* in the 1140s and the development of a standard law

²⁴ Kantorowicz, 205-6

²⁵ this was first done by Pope Innocent III in 1202

²⁶ Kenneth Pennington, "Innocent III and the Divine Authority of the Pope,"

<http://faculty.cua.edu/pennington/Canon%20Law/POPEBISHOPSchaptOne.htm>, accessed 5/31/06

²⁷ Berman, 245

²⁸ Berman, 306

curriculum in universities around the continent in order to teach the newly revived Roman civil code. This revival of Roman law laid groundwork for the further development of concepts of political authority already in circulation – *potesta* (power), *auctoritas* (authority), *imperium* (discretionary authority), and *iurisdictio* (jurisdiction).

The influence of Justinian's code was felt most strongly on the continent, less so in England. Emperor Frederick I Barbarossa of Germany began to use it to buttress his claim to absolute authority over the city-states of northern Italy, and his grandson Emperor Frederick II used it as the basis of his Constitutions of Melfi. In France, the Capetian monarchs of the 12th and 13th centuries realized the utility of the Code in expanding their administrative control their territory and began to employ the same absolutist claims to rule as used by the German emperors. French legal scholars developed the legal maxim *rex imperator in regno suo* (the king is emperor in his own realm) as an interpretation of the imperial office found in the Justinian Code.²⁹ Finally, as noted above, remnants of Roman law were already a part of the legal systems of the Italian peninsula and the Mediterranean region. Yet, there has always been some question as to why Roman law was not as influential in England. The Norman kings of the 11th and 12th centuries would not have resisted the absolutist implications of Roman law, which provided a definite contrast with the community-based Germanic law which was predominant. Instead, the Norman kings utilized existing institutions to strengthen their royal power. As a result, no permanent administrative, judicial, and legislative bodies operated on their own autonomous authority, as on the continent.³⁰ All local and feudal institutions became absorbed under the control of the king. This had two

²⁹ Cantor, 311-12

³⁰ Berman, 441

important implications for the political culture of England. First, this led to the development of strong checks on royal power, despite the king's administrative control. An abstract idea of the "state," divorced from the local people administering it, never developed in England.³¹ The local "King's men" remained a visible and approachable part of the community. Second, there developed the system of common law, another innovation of royal power under King Henry II. Under common law, the king used the local nobility to carry out his administration of justice, who performed unpaid services by acting as judges and serving on juries.³² The king also made use of writs to carry out his orders, but this also had the unintended consequence of placing limits on the king's jurisdiction, by holding him to the letter of his own law.

The Church was also strongly influenced by Roman law concepts during this period. Despite the initial reluctance of the papal reformers to embrace secular law for spiritual ends, especially the pagan legacy of Rome, the usefulness of the vocabulary of the law proved irresistible. The canonists had already described the Pope's authority over the Church and Christendom as *plenitudo potestas*; to this list was added *iudex ordinarius omnium*, ordinary judge of all; *lex animata*, the living law; and *omne habet in pectore suo*, all the laws are in his breast. Later, these same terms would be borrowed to describe the office and powers of the national monarchs.³³

Despite the influence that the Church and Roman law would come to have within Western Europe through both the civil code system and canon law, the administration of affairs at the local level remained within the province of custom (*consuetudines*) and long

³¹ Kantorowicz, 382

³² Cantor, 318

³³ Gaines Post, *Studies in Medieval Legal Thought: Public Law and the State* (Princeton, N. J.: Princeton University Press, 1964), 433-4

practice and were supplemented by the laws of the king (*constitutiones*), and the mechanisms of enforcement and adjudication were strengthened by the expansion of the kings' courts (*curia*).³⁴ The authority of monarchs and nobility continued to flow from existing Germanic law and feudal customs, with their emphasis on contractual obligations between the ruler and the people.³⁵

[The] law curricula for university instruction from the twelfth to the eighteenth centuries in Europe were exclusively based on the laws of Justinian, the *Corpus iuris civilis*, and the *corpus iuris canonici*, but judges and notaries did not usually apply these laws. Furthermore, as is known, the contents of these bodies of laws gave no guidance and provided no norms for those who had responsibilities for governance or administration on the local level, in the *commune civilis* or the *regnum*, in the seigniry or the principality, in the hierarchy of the Church or in the monastic orders.³⁶

Thus, two kinds of law existed: *utrumque ius*, the one and the other, i.e., the duality of civil and canon law; and the *ius proprium*, the local laws of Europe. Thus, the authority of the Church over Western Europe was to remain ultimately religious and ritual, and it was left to the local rulers to fill in the blanks of governance.

Opposition to Pope and Empire

The Papal Revolution was not without its opponents. From the very beginning, resistance emerged from other centers of authority within medieval society. While remaining respectful of the Church's position as spiritual shepherd of the Christian community, lay critics began seeking to refute the Papacy's hierocratic concepts and aims

³⁴ Hinsley, 50f

³⁵ Post, 426

³⁶ Manlio Bellomo, *The Common Legal Past of Europe: 1000-1800*, trans. Lydia G. Cochrane, (Washington, D. C.: Catholic University of America Press, 1995), 124

by developing a number of arguments.³⁷ The writer of the 11th century tract *On the Preservation of the Unity of the Church*, argued that the primary source of the Pope's power, from Christ's commission to Peter "to loose and to bind,"³⁸ was not a comprehensive jurisdiction and did not apply to local rulers.³⁹ Peter Crassus, who taught at the University of Ravenna, argued that the Pope had set aside the "sacred laws" of the Emperor by arrogating to himself the function of law-giver.⁴⁰ Reiterating the Gelasian doctrine of the "two-swords,"⁴¹ defenders of Emperor Henry IV said that Christ had established two governing authorities over Christendom, Pope and King, and in asserting his sole power to invest clergy, the Pope had usurped the power of temporal rulers.⁴² A tract written by an anonymous defender of the Norman king showed that "the concept of the king as a person endowed with spiritual qualities was still in bloom and had hardly passed its heyday."⁴³ Guido of Ferrara sought to preserve the supremacy of the king's power by focusing on the issue of material possession and the importance of regalian rights within the feudal system. In the feudal understanding of property, the property of the king was inalienable, and therefore, anything conferred by the king to anyone, including the office of bishop, made that person a usufruct of the king; they had the right to the "fruits" of the office but not ownership of it. Thus, the Church would be seizing the king's prerogative if it took away his power of investing the bishop with his office.⁴⁴

³⁷ Ullmann, 116-17

³⁸ Matthew 16:19

³⁹ Ullmann, 139-40

⁴⁰ *ibid.*, 137-38

⁴¹ Pope Gelasius I, who ruled from 492 to 496, argued in his conflict with Eastern Roman Emperor Anastasius I that the powers of Pope and Emperor existed separately but that both were expected to work together harmoniously for the good of everyone.

⁴² Ullmann, 141

⁴³ Kantorowicz, 45

⁴⁴ Ullmann, 142

In the 13th and 14th centuries, direct opposition to the Papacy by both the emperor and the regional monarchs continued to grow. While the Church was successful at dominating rational discussion of both theological and political issues, it never actually established its supremacy as a political authority. The relationship between the emperor and the Pope had always been tenuous at best, but it reached a low point during the reign of Emperor Frederick II (1220-1250). Under the influence of Roman law and his own sense of having a world-historical role, Frederick resisted the coercion of the Pope and carried out his rule despite being excommunicated a number of times. Frederick's approach to his own authority was based on the assumption of a dual vicariate of Christ: Christ was both king and priest. The royal function had passed into the hands of the emperor, and while the priestly function was in the hands of the Pope. Within this theory of political power, the Pope had no power to issue laws which affected the royal domain.⁴⁵ In 1231, Frederick issued the Constitutions of Melfi, a law code for the kingdom of Sicily, which asserted the predominance of the role of the Emperor over the secular affairs of Christendom.

After Frederick's death, the Holy Roman Empire imploded over a succession crisis. In 1320 another conflict arose, this time between Emperor-elect Ludwig IV of Bavaria and Pope John XXII, over papal interference in the election of the emperor. This ultimately led to the promulgation of the *Golden Bull* in 1356, which reformed the election procedure of the emperor and implied the absence of papal control over the empire. This episode also inspired thoughtful lay reaction to the claims of the Church, including Marsilius of Padua in his *Defender of the Peace*, and William of Ockham, in his *Dialogues*. Both argued (on very different grounds) in support of the temporal

⁴⁵ Ullmann, 140

authority of the emperor as necessary aspect of keeping the peace among the kings of Europe; they also argued for a greatly diminished role for the Church in the administration of the empire.

In the midst of these clashes between emperor and Pope, the power of the regional monarchies was growing. England and France were at war with one another in the late 13th century, and both countries sought to levy taxes on the clergy and Church property to help finance their war efforts. Pope Boniface VIII issued his bulls *Clericos Laicos* (1296) and *Unam sanctum* (1302) during this conflict in order to protect church property and to reassert the Church's supremacy over temporal matters with a version of the “two swords” argument; both lay and ecclesiastical officials were threatened with papal interdict and excommunication if they took part in the provision of church revenues for lay purposes without papal approval.⁴⁶ In response to this, King Philip IV of France and his chief minister William de Nogaret had the Pope kidnapped and were going to have him brought to France to try him on charges of heresy; Boniface soon escaped with the help of locals but died shortly thereafter. From that point on, French cardinals began to dominate the College of Cardinals, and they elected a Pope who was subservient to French national policy. These events would directly contribute to the Great Schism within the Church and its subsequent loss of prestige and legitimacy among the population of Europe.⁴⁷

By the end of the 14th century, the power of the Church over the secular affairs was on the wane. The seeds for the Protestant Reformation were already sown. The

⁴⁶ see *Internet Medieval Sourcebook*, “Boniface VIII, *Clerico Laicos*,” <http://www.fordham.edu/halsall/source/b8-clericos.html>, accessed 8/21/08; and “Boniface VIII, *Unam Sanctum*,” <http://www.fordham.edu/halsall/source/b8-unam.html>, accessed 8/21/08

⁴⁷ Cantor, 495-97

power of the Holy Roman Emperor was on the decline, whose realm now consisted only of a number of independent and loosely united principalities stretching across central Europe. The Italian principalities and city-states variously acquiesced to papal or imperial control or else asserted their independence. England and France emerged as independent kingdoms in their own right, and Spain arose a century later, following the *Reconquista*, becoming a powerful kingdom in its own right.

All of these changes pointed to the emergence of new circumstances which inspired new approaches to the question of political supremacy. The word "sovereign" made its first appearance during this time in Philippe de Beaumanoir's the *Coutumes de Clermont en Beauvais* (1283). He argued that while each baron was "*souveran*" over his own barony, the French king was "*souveran*" over all of his barons.⁴⁸ The realm of the king, his *regnum*, has less and less to do with the authority conferred to him by Pope or emperor than it did with the territory under his actual administration. Following the defeat of Pope Boniface VIII, Pope Clement V issued the bull *Pastoralis curia* in 1313, which supported the claims of independence of Robert of Naples from Emperor Henry VII. This was the first time that the empire had been recognized as a territorially-limited entity, from which other political communities were separate.⁴⁹ This only confirmed the obvious, that territorially-based rule⁵⁰ was becoming of central importance in conceiving of political authority, and the French legal maxim cited earlier, that a king is emperor in

⁴⁸ Ullmann, 155-56; Berman, 474

⁴⁹ Post, 468-69; Ullmann, 197-98

⁵⁰ This should be distinguished from the modern international law concept of effective control over a territory. At this point in European history, the 14th and 15th centuries, actual effective control over a national territory had yet to be achieved. Pope Clement's bull simply made the point that the Empire was a territorially-bounded political entity, distinct from other such entities.

his own realm, contained the foundational idea of what would emerge as sovereignty in the West.

The Modern Era

With the decline of the authorities of the Catholic Church and the Holy Roman Empire, the territorial state was poised to assume its central position as the dominant political institution throughout Europe. As noted earlier, the territorial state was but one of a number of political institutions existing in the late medieval period, one of a number of loci of authority in the complex web of feudal society; the national monarch was but one of many feudal lords and princes. A number of changes lead to the emergence of a new political order in Europe. The Black Plague had significantly reduced the population of Europe by the mid-14th century, but this had also created agricultural surpluses and a need for labor in the urban areas. Latin was being supplemented by vernacular languages, first in literature, then in religion, and finally in government. The loss of confidence in the authority of the Church led many throughout Western Europe to embrace the various strands of Protestant reform, which in many instances allied themselves with the national monarchs against the Church. The Protestant Reformation itself signaled the end of a united Christendom and, in most instances, split Europe along national lines.

At the same time, the priority of the spiritual life and its identification with public life, once assumed during the medieval period, gave way to a pronounced divide between public and private lives, where authority in spiritual matters migrated to the private

sphere, whether in terms of individual conscience or a local congregation or the individual choice of a ruler; the nature of public authority was left open to be filled, although the legacy of the spiritual underpinnings of that authority still existed.

The efforts . . . to provide the state institutions with some religious aureole, as well as the adaptability and general usefulness of ecclesiastical thought and language, led the theorists of the secular state very soon to a more than superficial appropriation of the vocabulary not only of Roman Law, but also of Canon Law and Theology at large. The new territorial and quasi-nation state, self-sufficient according to its claims and independent of the Church and the Papacy, quarried the wealth of ecclesiastical notions, which were so convenient to handle, and finally proceeded to assert itself by placing its own temporariness on a level with the sempiternity of the militant Church.⁵¹

As much as the complexity of social and political relations that developed within feudal society was an attempt to deal with the breakdown of the Roman Empire's power across Europe, now the independent territorial states sought to build upon the remnants of feudal society. It was inevitable that the dominant political institution would borrow its conceptual self-understanding from previous institutions, including the religious idea of a supreme power, only now in secular form.

In fact, what made the situation of the European territorial monarchies unique was this absence of a supreme authority, such as the Pope or Emperor, above them to settle disputes and broker agreements among kings and princes. Kings had supreme authority over the people within their own realm but were beholden to no such authority themselves. In the absence of sovereign, or supreme authority, among kings there began to develop an entire body of norms and practices which would become what we today call "international relations" – rules of war and peace, laws of the seas, establishment and maintenance of diplomatic relations, rules of trade, and so on. The relationships of

⁵¹ Kantorowicz, 207

independent territorial states grew out of ongoing negotiation and conflict among their rulers, unimpeded by external authority.

The first inkling of this situation can be seen in the work of Niccolo Machiavelli. Although his reputation precedes him in the modern era as an advocate of political manipulation and "reason of state," at the time of his writing in the early 16th century the political geography of Europe was unsettled, and the larger territorial states were jockeying for control of the Italian peninsula as well as for control of trade routes to Asia. Although the Church retained some control of the Italian peninsula and had some influence through the kings of France and Spain and through the Holy Roman Emperor, its preeminence as an arbiter of conflict was clearly on the decline. Machiavelli's experience in the diplomatic office of his native Florence gave him a unique perspective on the ways in which these newly emerging territorial states had to negotiate their actions with one another.⁵² Conflict among states was becoming increasingly destructive at that time, reaching a nadir during the Thirty Years' War, and diplomacy would assume a decisive role in the following decades.⁵³ It was out of this conflict that the Peace of Westphalia (1648) recognized the role of monarchs to determine the dominant religious institutions within their territory (*cuius region, eius religio*); it was also one of the first major diplomatic congresses in early modern Europe. Permanent embassies and ambassadors were becoming a necessity as territorial states carried on unilateral and multi-lateral relations with one another. Diplomacy and the norms of international law

⁵² see Machiavelli's diplomatic dispatches in Niccolo Machiavelli, *Chief Works and Others*, vol. 2, trans. Alan Gilbert (Durham, N. C.: Duke University Press, 1965).

⁵³ Theodore K. Rabb, ed., *The Thirty Years War* (Lanham, Maryland: University Press of America, 1981), 74-76

would come to embody these developing means of coordinating international actions in the absence of a supreme authority.

While rulers of these territorial states were developing rules and norms amongst themselves, domestically another set of changes were taking place. In the earliest decades of the modern era, monarchy seemed to be the form that sovereign statehood would take. It went without question, at least for a time, that monarchy was the most "natural" form of government, the most familiar to European experience. However, social relations were in continual ferment, and beginning during the time of the Protestant Reformation and continuing until the late 18th century, a few of the territorial states in Europe would undergo "constitutional revolutions" in one form or another. The Kingdom of Poland, and later, the Polish-Lithuanian Commonwealth, established a representative assembly of the nobles, the *Sejm*, in 1493, and instituted the principle of "*nihil novi*," "nothing new" without the consent of the assembly. Its last dynastic monarch, Sigismund II August (ruled 1548-1572), made changes that allowed the country to become a constitutional republic with an elected monarchy.⁵⁴ The Dutch Republic declared its independence from the Spanish monarchy in 1581, and it adapted the medieval institution of the States-General to create a system of representation and constitutional limits on the chief *stadtholder*. England already had a strong constitutional tradition, growing out of the institution of common law, the use of writs, and the occasional demands for specified rights by the landed nobility. The nobility and the commoners continued to make demands on the King through the institution of Parliament. In the 17th century, the tensions between Parliament and King would turn into

⁵⁴ Lonnie Johnson, *Central Europe: Enemies, Neighbors, Friends* (New York: Oxford University Press, 2002), 108-109

the English Civil War (1642-1651), the restoration of the monarchy (1660), and the “Glorious Revolution” (1688) which broke the absolute power of the monarchy.

In the kingdom of France, while the Estates did not have the same ability to make demands of the king, there still existed a strong strain of demand for constitutional controls on the monarchy, visible particularly during the French Wars of Religion (1562-1598). It would ultimately take the violence of the French Revolution to topple the monarchy and create some semblance of constitutional rule. Louis XIV, who reigned from 1638 to 1715, did more than any other French monarch to establish the strength of the centralized, absolutist government. The other monarchies of Europe followed France's lead in promoting their own versions of absolutism. The Habsburg rulers undermined the elected office of the emperor in the Holy Roman Empire by turning the office into a hereditary entitlement for themselves, following the reign of Charles V in 1556.⁵⁵ Furthermore, the rule of the Habsburgs remained personal, not constitutional; their empire remained a collection of feudal estates, and each domain had its own traditions and institutions and regional interests, with no interest in administrative centralization. Attempts at centralization and administrative reform under Empress Maria Theresia (1740-1780) and her son Joseph II (1765-1790) eventually failed. Spain and the Italian peninsula were two areas least affected by the Protestant Reformation, and they retained their strong alliance with the Catholic Church. Spain eventually became a united country under centralized control under Bourbon rule after the War of Spanish Succession, ending in 1714. The 18th century saw the rise of Brandenburg-Prussia in northern Germany, especially under Frederick Wilhelm I, who introduced some Enlightenment ideas for pragmatic reasons, such as improving the efficiency of public

⁵⁵ Johnson, 63

administration, and sought to have all realms of public life emulate military discipline.⁵⁶ Absolutist monarchy was also a feature of political life in the Kingdoms of Sweden and Denmark in the 17th and 18th centuries. Finally, the Empire of Russia was influenced by this same strand of Enlightenment absolutism through Peter the Great and Catherine the Great, also ruling in the 18th century.

Colonialism

While constitutional revolutions were taking place in some countries and enlightened absolutism was being established across the rest of the European continent, the foreign policy of these new territorial states was wedded to the exploration of the globe and the establishment of settler colonies, trading posts, and plantations in other parts of the world. This grew out of attempts to circumvent the Ottoman Empire's control of trade routes with the Far East, a mercantilist preoccupation with accumulating precious metals and acquiring monopolies over trade routes and the trade of valuable products, and national support for Christian missionary activity in the newly discovered lands. Spain, Portugal, France, and England controlled the Americas until the early 19th century, when European influence was decisively eliminated on those continents, and the newly independent countries became sovereign, constitutional, territorial states in their own right.

Portugal and the Dutch Republic dominated trade with Asia in the 17th and 18th centuries. England established a colonial presence in India in the 17th century, and this provided it with a gateway to inner Asia and a base for the dominance of trade in the

⁵⁶ Johnson, 111

region by the end of the 18th century. By the early 19th century, the British East India Company effectively controlled the Indian subcontinent. Traditionally resistant to outside presences, both Japan and China would eventually yield to Western pressure and open up their interiors to trade and commerce. The Opium Wars (1839-42 and 1856-60) and the Taiping Rebellion (1850-64) weakened the Chinese Empire, opening the way for the European states to carve out their "spheres of influence." The collapse of the Mughal Empire in India, already weak in the early 19th century, allowed the British government to assume complete administrative control of the region in 1858. Following attacks on French Catholic missionaries in the empire of Vietnam, the French government managed to convince the Vietnamese Emperor to cede control of its Southeast Asian provinces (Cochin China) and placed them under French "protection" in 1862; France would directly control all of Southeast Asia by 1884. The United States Navy under Commodore Perry paid a number of visits to Japan between 1852 to 1854 and managed to convince the Japanese emperor to open up to trade with the Western nations; what made the case of Japan different from the course of other Asian countries was that, in another decade, after the beginning of the Meiji Era, Japan undertook an ambitious course of Western-style technological and economic development. In the following years, Japan would take control of Korea, Taiwan, and sections of Manchuria.

Africa also had contact with European countries in past centuries, but the European presence was not large, consisting of Portuguese trading posts in coastal areas in the sub-Saharan regions, and Dutch and English settlers in the Cape Colony in the south. France began the conquest of northern Africa in the 1830s, beginning with Algeria, later annexing the kingdoms of Tunisia and Morocco. France also enjoyed good

relations with the viceroy of Egypt, and it was under French auspices that construction of the Suez Canal began in 1854. Because of debts incurred for its war against Ethiopia, the viceroy of Egypt, Ismail Pasha, was forced to sell his shares of the Canal to the British government in 1875. France and Britain assumed financial control over Egypt four years later. In 1882, following a period of civil conflict, British troops began their occupation of the country. Following the Berlin Conference of 1884-85, the major European powers agreed to guidelines on how to lay claims to their colonial possessions, and this marked the beginning of the "scramble for Africa." Belgium gained control of the Congo Free State; Germany controlled Togoland, the Cameroons, South West Africa, and East Africa; Britain controlled Kenya, Uganda, the Union of South Africa, Rhodesia, and Tanganyika; and France controlled Guinea, French West Africa, and French Equatorial Africa. Italy followed suit by claiming Libya and Chad and making incursions into Ethiopia.

This period of colonial expansion would continue until the First World War, after which there was a broad (though shallow) international support for the national independence and self-determination of peoples. Those regions in the Middle East that had been under the rule of the Ottoman Empire were transferred to the administration of Britain and France. Between the First and Second World Wars, there was a period of growing domestic support for national independence in the Middle East, Asia, and Africa. The Second World War weakened the ability of the European powers to administer their colonial holdings.

After 1945, the push for decolonization had begun, both at the local level and through the newly-created United Nations. However, a number of factors stood in the

way of former colonial dependencies becoming sovereign states. The Cold War began shortly after World War Two, and the ideological battle between the United States and the Soviet Union subsumed practically every movement for national independence in the years that followed. Many of the countries striving for independence were economically weak and underdeveloped, eventually making them dependent on foreign aid, and thus, on the national and international agendas of the aid providers. These two factors created domestic situations in those countries which often polarized the population, undermining attempts to create broad popular support for new governments and often leading to civil conflict; some of these conflicts still continue today.

Conclusion

While the idea of sovereignty sought to provide populations of European countries with some semblance of political order and security in the decline of the feudal era, this has not always been the case for a great many countries which have sought political independence in the 20th century. For them, sovereignty has become a kind of trap – a political ideal that seems to work for many Western nations but which has disastrous effects when put into practice in their own political communities. It was thought that after the end of the Cold War, struggling nations around the world would then have the opportunity to escape of the ideological conflict and to pursue their own courses of development, but this has been far from the case. In the five case studies of crimes against humanity that will follow, three of them occurred after 1990. Two wars have been fought in the Persian Gulf region and southwest Asia, and civil conflict has

raged through Sub-Saharan Africa. Although national borders exist, and international recognition has taken place, sovereign authority has failed in those regions. Even Western nations haven't escaped these problems. The European states were born out of a crucible of war and civil conflict in the early modern era. The settlement of the Americas led to the extermination of native peoples, the institution of slavery and varying degrees of racial segregation, and extremes of economic inequality; sovereignty has apparently existed for the benefit of some people but not for others.

This history of the concept of sovereignty demonstrates three things. First, sovereignty is not a "natural" or self-evident concept of political authority. Rather, it is a mode of political authority whose origins can be traced to the breakdown of feudal modes of the authority at the end of the Middle Ages; it was one solution to a set of political problems confronting the peoples. Other legitimate modes of authority existed alongside of the national monarchies until the modern era. In the contemporary world, no other means of organizing political authority is considered legitimate by the community of states. Second, the idea of sovereignty is a theological-political concept; the idea of a political authority that knows no accountability to any authority higher than itself is one that takes over the theological language of the debates between Pope, Emperor, and King in the Middle Ages. This aspect of sovereignty became obscured after the Enlightenment period, as political language became more secularized.⁵⁷ When we speak of sovereignty, we are still speaking in theological, even metaphysical terms. Finally, there exist two poles of sovereign authority, as evidenced by the constitutional revolutions in the early modern period: absolutism and constitutionalism. In the next chapter, I will explore this

⁵⁷ see Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty*, trans. George Schwab, (Cambridge, Mass.: MIT Press, 1985)

in greater depth, but at this point, it is enough to say that theorizing about sovereignty has not moved far beyond these two poles.

Taken together, these conclusions point to a facet of sovereignty that remains unrecognized and “un-thought.” There is a dangerous aspect of sovereignty that is often overlooked but which becomes visible in times of social and political instability; the sovereign authority has the ability to define threats to its existence, to define its enemies as it sees fit; the perception and definition of threats to the body politic is one of the central roles of sovereign authority. In times of war, this role seems straightforward and receives its institutional form as military power. At other times, the body politic is protected from internal threats by police power. The paradox is this: by the late 20th century, there is never a time when the body politic is not threatened. I will examine this assertion in more depth in the case studies and in the conclusion, but at this point, it is enough to say that this situation ensures that the sovereign authority is always justified in defending against or attacking threats.

However, this authority remains beyond the reach of accountability - there is no limit to what it may do, within its own material capabilities. Accountability here means the condition of being answerable for one’s actions to a higher authority. As I have shown in this chapter, the development of sovereign authority slowly does away with the notion of authority that is higher than that of the state itself, drastically curtailing the degree to which a state is accountable to any entity. In the next chapter, theorists of monarchical sovereignty such as Bodin and Hobbes define the limits of monarchical power by arguing that the law of God and natural law are the boundaries of sovereign authority. In turn, theorists of popular sovereignty such as Locke and Rousseau sought to

reign in the claims to sovereign power by absolutist monarchs by relocating sovereignty in the people, by making the sovereign authority answerable to the people themselves. Under either monarchical or popular theories of sovereignty, through its prerogative power the sovereign has a wide authority for interpreting and defining threats to the existence of the political community. When threats are seen as an internal, then the stage may be set for atrocities to be committed, because the very people that the monarch or the elected government is supposed to be protecting comes to be viewed as the enemy. This is why it is important to understand the internal dynamics of sovereignty in theory, in order to make sense of this permanent state of war.

CHAPTER 3

NAMING THE BEAST

Out of the medieval period emerged both new practical arrangements of power in the institutions of both absolutist and constitutional states and a new theory of power constructed around the concept of sovereignty. The most influential philosophers of sovereignty in the early modern period were Jean Bodin, Hugo Grotius, and Thomas Hobbes. During the period of the “constitutional revolutions” in the 17th and 18th centuries, thinkers such as John Locke, Jean-Jacques Rousseau, and the framers of the American Constitution began to advocate a different configuration of sovereignty, one which relocated the source of sovereign authority away from God and the monarch towards the people. Bodin, Grotius, and Hobbes were almost contemporaries of one another,⁵⁸ and they wrote in response to the events of the Protestant Reformation in their respective countries. The later writers rethought the structures of sovereignty advocated by Bodin, Grotius, and Hobbes, while retaining the concept’s broad delineations of authority within the country’s boundaries. These variations in the concept of sovereignty, developed over the course of three centuries, have proved to be enduring until the present day.

What these two poles of sovereignty, which I will call monarchical and constitutional, have in common are their positions toward the security of the population and territory under sovereign authority. Questions of subversion and the role of defining threats to the existence of the state fall to the sovereign authority. This becomes a troublesome duty in the advent of civil war. Almost by definition, civil conflict occurs

⁵⁸ Bodin lived from 1530 to 1596, Grotius, 1583 to 1645, and Hobbes, 1588 to 1679.

when the basic unity of country breaks down and one part of the population fights against the sitting government or another part of the population. In the process, a government's legitimacy is called into doubt; its sovereign authority is called into question. Civil conflicts can ultimately decide when legitimacy is restored. This points to a deeper issue, the very foundation of sovereign authority itself, which is grounded in control over the means of violence, without regard to the historical origins of that authority. These theorists of sovereignty, from Bodin to Rousseau, consistently defend a conception of authority rests on control over the means of violence. Borrowing an argument from philosopher Giorgio Agamben, this means that, because it controls the means of violence, sovereign authority partly lies outside the sphere of the law it enforces and further, it lies beyond all accountability, even in constitutional settings. The ability to define threats, the control over the means of violence, and the lack of accountability together create the potential for atrocities within a country's own borders.

Sovereignty and Monarchy

Bodin

Bodin's treatment of sovereign authority is a codification and clarification of the already-existing political relations of his day in France. In particular, he sets out to distinguish the relationship between sovereign authority and subject from the network of feudal relationships of the previous era. In doing so, he is describing the emerging relationships between government and subjects in the other two prominent monarchical states of his era, England and Spain. For Bodin, what differentiates sovereign authority from the feudal modes of authority is the absence of reciprocal rights and privileges: the

subject obeys, and the prince commands and protects them. Subjects have no rights except for those conferred upon them by the sovereign himself. On a social level, this represents the rise in preeminence of the king's law, which supplanted and in many cases superceded the laws of the towns and villages, the Church, guilds and fraternities; a multiplicity of laws was trumped by laws emanating from one source, as all other modes of authority in late medieval/early modern Europe were falling under the jurisdiction of the king's law. The king's relationship with his subjects was to be direct and unmediated. "The highest degree of compulsion is the power of life and death . . . This is the highest attribute of sovereignty, proper to the majesty of a prince, and inherent in him to the exclusion of all other public persons."⁵⁹

The nature of this sovereign authority is explained by reference to two other fundamental modes of authority, that of a father over a household, and that of God over creation. Bodin focuses on the correspondence between these three modes of authority, the centrality of command. "[T]here is none that has a natural right to command save only the father, who is the image of the Almighty God, the Father of all things."⁶⁰ Sovereign power, in its essence, is paternal power, the power of a father over his household, which would include wife, children, and servants. Bodin defined sovereignty as the absolute right to command. "[He] cannot in anyway be subject to the commands of another, for it is he who makes law for the subject, abrogates law already made, and amends absolute law."⁶¹ As has been noted, the power of a sovereign is power over life and death, and it is also the absolute power of command in a political community. Bodin

⁵⁹ Jean Bodin, *Six Books of the Commonwealth*, abridged and trans. M. J. Tooley, (Oxford: Basil Blackwell, 1955), 91

⁶⁰ *ibid.*, 12

⁶¹ *ibid.*, 28

considered these two attributes as making up the quality of “majesty” that also defined sovereign authority, from the Latin term *maiestas*, describing absolute and perpetual power to hold a commonwealth in awe.⁶² In summary, the power of sovereign authority is the power to command, backed by the means of violence.

Yet even for Bodin sovereign authority has limits. “[All] princes of the earth are subject to the laws of God and of nature, and even to certain human laws common to all nations.”⁶³ Bodin consciously distinguished his concept of sovereignty from mere tyranny, which he defined as rule in which the laws of nature are ignored.⁶⁴ First and foremost, the sovereign prince is subject to the laws of God. God is the ultimate sovereign, the Father of creation, and the princes of the earth are His lieutenants.⁶⁵ By treating earthly princes as part of the divine hierarchy, Bodin sidesteps the issue of the authority of the Church, which is probably a function of his intention to focus exclusively on the role of the sovereign prince; the unique position of the French monarchy within Christendom, as the unofficial protector of the Church’s interests in Europe; and the Wars of Religion in France. As a lieutenant of the Almighty, however, the sovereign prince will one day have to answer for actions before God, so it falls upon the prince to behave in a godly manner.⁶⁶ Second, the prince is subject to the laws of nature. For Bodin, this concept of nature covers everything from honor and equity, to the sanctity of covenants. The law of nature is what is reasonable and equitable.⁶⁷ Bodin eloquently describes a prince who governs in accordance with the laws of nature as one who

⁶² *ibid.*, 25

⁶³ *ibid.*, 28

⁶⁴ *ibid.*, 57

⁶⁵ *ibid.*, 40

⁶⁶ *ibid.*, 33

⁶⁷ *ibid.*, 33

fears God, is merciful to the afflicted, prudent in his undertakings, brave in action, modest in prosperity, constant in adversity, true to his plighted word, wise in counsel, careful of his subjects, helpful to his friends, terrible to enemies, courteous to men of good birth, a scourge of evil-doers, and just towards all.⁶⁸

Finally, the sovereign prince is subject to the laws that are common to all peoples. Bodin does not discuss these at length, but they include just war, property, and the constitutional laws of the realm. The latter refers to the rules that make up the foundation of a commonwealth, and the sovereign prince may not alter them.⁶⁹ As Bodin summarizes, justice is the end of law, the law is the work of the prince, and the prince is the image of God, so the law of the prince should be modeled upon the law of God.⁷⁰

A heavy burden rests upon the sovereign prince. He is the father of his nation and is responsible for its common welfare. It is his law, his command, which brings this about, but primarily, it is his good faith and example that holds the commonwealth together. “The surest foundation of a commonwealth is public confidence, for without it neither justice, nor any sort of lasting association is possible. Confidence only arises where promises and legal obligations are honoured.”⁷¹ The sentiments of faith and trust in the sovereign prince are what allow him to be able to carry out the demands of justice. For Bodin, trust, more than justice, is the basis of a political community. Justice considered alone is without sympathy, since it demands “the strict exaction of rights” without regard to persons. “But mutual affection leads men to make concessions.”⁷²

⁶⁸ *ibid.*, 60

⁶⁹ *ibid.*, 31; an example of this for Bodin is the Salic law, which prohibits women from ascending the throne in France

⁷⁰ *ibid.*, 36

⁷¹ *ibid.*, 158-159

⁷² *ibid.*, 98

This explains the necessity of divine and natural law for the political community, since their sole end “is to foster love among men, and between men and God.”⁷³

The concern with trust and public confidence will lead a prince to observe the principles of just war and the sanctity of agreements with other princes. “[Seeing] that they are the guarantors of good faith and sworn engagements, what assurance will those subject to them have of their own mutual undertakings if the rulers themselves are the principal breakers and violators of good faith?”⁷⁴ For reasons of domestic stability, it is in the interests of sovereign princes to carry on their affairs with one another in good faith and without ill-will, even in warfare. They will observe the right of conquest in war with one another, which creates its own form of legitimate rule in its wake, instead of mere tyranny.⁷⁵

There is a significant religious dimension in Bodin’s understanding of sovereignty. There exists a cosmic hierarchy, and a relationship of correspondence between the cosmic macrocosm and the social microcosm. God rules over the physical creation as father and judge; this is mirrored at the level of the political community, by the rule of the prince over his subjects; and at the level of the family, but the rule of the father over the household. These forms of rule are perpetual and absolute, the rulers of the lower orders subject only to the rule above them. The will of the sovereign authority is expressed as law. However, instead of being a mere arbitrary exercise of power, sovereign authority is held in check by divine and natural law. Power is exercised in accordance with the dictates of divine mercy and justice and by the standards of right reason and equity. Absolute authority, in this case, refers to the degree of a subject’s

⁷³ *ibid.*, 99

⁷⁴ *ibid.*, 177-178

⁷⁵ *ibid.*, 56-57

obedience rather than the reach of the ruler's power. In a well-ordered universe, political community, or household, the subject owes obedience to the ruler in exchange for protection, mercy, and justice. God respects a human's dignity in the form of free will; a prince respects a subject's life and property; and a father respects his wife's, children's, and servants' humanity by treating them well. At the level of relations between political communities, princes observe the sanctity of covenants with one another as well as the rules of just war.

Within Bodin's concept of sovereignty there is little room for popular rule or democracy; even aristocratic governments get no sympathy in his account of sovereign power. "All the laws of nature point towards monarchy."⁷⁶ This should come as no surprise in the late medieval/early modern context in which Bodin lived. Democratic, republican, or popular government was viewed either as decadent, because of its association with ancient Greece and Rome - where it was castigated by the ancient Roman and Greek writers themselves - or as violating the Christian ideal of a unitary authority. Given these assumptions, how can those who are subjects of the law also make those same laws? Bodin reluctantly and briefly considers the possibility of popular government.

The first attribute of sovereignty is the power to make law binding on the subject. But in such a case who will be the subjects that obey, if they also have a share in the law-making power? And who will be the law-giver if he is also himself forced to receive it from those upon whom he has imposed it? One is forced to the conclusion that if no one in particular has the power to make law, but it belongs to all indifferently, then the commonwealth is a popular state.⁷⁷

Bodin's difficulty with popular government also stems from his assumption that the law is not binding upon the lawmaker himself. This applies not only to rulers in other

⁷⁶ *ibid.*, 199

⁷⁷ *ibid.*, 52

political communities, but also to subsequent rulers in the ruler's own community. "[All] laws, ordinances, letters patent, privileges, and grants whatsoever issued by the prince, have force only during his own lifetime, and must be expressly, or at least tacitly, confirmed by the reigning prince who has cognizance of them."⁷⁸

Bodin postulates an essential division within a political community under sovereign authority between those who rule and those who are ruled, and this is what distinguishes Bodin's concept of sovereign authority from earlier feudal modes of authority. Feudal modes of authority incorporated reciprocal duties and privileges between lord and vassal, while sovereign authority counts on their absence. Under sovereignty, the subject obeys, and the prince protects. Subjects have no rights except those conferred by the prince himself. Political and social relationships are reduced to those of subjection and command, which makes it so difficult to conceive of any form of popular government that is stable.

Bodin is also unable to conceive of any power-sharing arrangements between kings, aristocrats, and people. Sovereignty is not divisible, and any division of sovereign rights would inevitably lead to civil war.⁷⁹ In Bodin's own lifetime, the Estates General began to exert some power against the French monarchy, but Bodin did not see the Estates as anything more than a ratifying body for the king's laws.⁸⁰ "[If] the authority of the monarch is to be limited, and subjected to the popular estates or to the senate, sovereignty has no sure foundations."⁸¹ To drive home his point, Bodin points to the

⁷⁸ *ibid.*, 28

⁷⁹ *ibid.*, 55

⁸⁰ *ibid.*, 32

⁸¹ *ibid.*, 200

tendency of aristocracies and democracies to turn to dictators in times of emergency⁸² as proof that sovereign authority should reside in the hands of one person.

Grotius

When Grotius refers to sovereignty, he says that he is not interested in looking at “civil acts,” the outward form of daily administration of the state, but at the body of law upon which the administration rests.⁸³ Furthermore, Grotius only defines sovereignty insofar as it is useful in answering his primary question, can a public war be waged by an authority who is not sovereign?⁸⁴ For Grotius, only a civil power can wage a public war. Civil power is defined as the moral faculty of governing a state.⁸⁵ Grotius uses the term “faculty” to denote active ability, as opposed to aptitude, or potentiality.⁸⁶ This in turn leads Grotius to ask, exactly who or what has this active power to govern the state? This leads him to consider the question of sovereignty.

Central to Grotius’s idea of sovereignty is the idea of a *people*. He defines this term from both legal and theoretical points of view.

An association in which many fathers of families unite into a single people and state gives the greatest right to the corporate body over its members. This in fact is the most perfect society. There is no lawful act of men which does not have relation to this association either of itself or by reason of the circumstances. And this is what Aristotle expressed in saying that ‘the laws prescribe concerning matters of every kind’.⁸⁷

⁸² *ibid.*, 197-198

⁸³ Hugo Grotius, *The Law of War and Peace: The Translation, Books I, II, and III*, trans. Francis W. Kelsey in collaboration with Arthur E. R. Boak et al., (Indianapolis: Bobbs-Merrill, 1962 [1925]), 125

⁸⁴ *ibid.*, 98

⁸⁵ *ibid.*, 101

⁸⁶ *ibid.*, 35

⁸⁷ *ibid.*, 253; the reference to Aristotle is from the *Nicomachean Ethics*, 5.2, “practically the majority of the acts commanded by the law are those which are prescribed from the point of view of virtue taken as a whole,” trans. W. D. Ross, (New York: Oxford University Press, 1980)

From a legal point of view, a people is the households belonging to the class of bodies made up of separate members but who are comprehended under a single name, a kind of public association (in terms of Roman law, a *collegium* or *universitas*, or what today would be called a corporation). “[Those] who unite to form a state form a kind of perpetual and lasting association by reason of the character of those parts which are called integral.”⁸⁸ From a theoretical point of view, a people is an association of families or households, borrowing from Aristotle’s understanding of the constitution of the *polis* (*civitas* in Roman terms), which seeks to realize the common good. This association has a singular essential character or spirit, which is the “full and perfect union of civil life, the first product of which is sovereign power,” the bond which holds together the state.⁸⁹

Following this, Grotius takes the relationship between king and people as paradigmatic in his understanding of sovereignty, and he begins to question the validity of contemporary ideas of popular sovereignty. While not wholly consistent in his chain of arguments, he shows that claims to sovereign authority by the people do not stand on their own. Interestingly, the central importance of the concept of the people can be seen most clearly in a number of arguments Grotius used to specifically refute popular sovereignty. First, Grotius argues that all men possess the legal right to enslave themselves to another for private ownership;⁹⁰ a people *with legal competence* may submit itself to another (people or king) in order to be governed, thereby transferring its sovereignty over itself to the dominion of another.⁹¹ Second, a people may select the

⁸⁸ *ibid.*, 261

⁸⁹ *ibid.*, 310-311

⁹⁰ *ibid.*, 103

⁹¹ *ibid.*, 103; the distinction between ownership and sovereignty will be treated below

form of government it wishes,⁹² thereby indicating a collective agency in its decision-making powers. Third, a people may have recourse to any number of justifications to renounce its right to govern itself and thus vest this right in another.⁹³ Fourth, citing Aristotle, Grotius argues that some men are by nature suited for slavery, and thus, some peoples are by nature better off being ruled by others rather than ruling themselves.⁹⁴ Fifth, throughout history, a number of nations have lived happily and prosperously under monarchical rule.⁹⁵ Sixth, Grotius cites the principle that property may be acquired by means of just war and then draws from it that notion that public authority may be acquired by conquest independently of any other source (not only from the people).⁹⁶ Seventh, some peoples have other peoples under their sway as subject to them.⁹⁷ Eighth, history shows that monarchs have not always derived their power from the will of the people.⁹⁸ Ninth, among people who are not permanent subject to kings, there are temporary kings, who are not subject to the people, as when Republican Rome turned to dictators in times of crisis.⁹⁹ Tenth, it is not always true that the one who vests another with authority is superior to him upon whom that authority is vested (a people is not superior to their king).¹⁰⁰ And eleventh, not all governments are established for the benefit of the governed (as with peoples who are made subject during wartime).¹⁰¹ At the end of this section of the text, Grotius goes on to make a further point, that a king and a people are not mutually dependent upon one another, and that if a people can decide

⁹² *ibid.*, 104

⁹³ *ibid.*, 104

⁹⁴ *ibid.*, 105

⁹⁵ *ibid.*, 105

⁹⁶ *ibid.*, 105-106

⁹⁷ *ibid.*, 106

⁹⁸ *ibid.*, 106-107

⁹⁹ *ibid.*, 108

¹⁰⁰ *ibid.*, 109

¹⁰¹ *ibid.*, 109

whether or not to obey a king's command, sovereignty is divided and thereby rendered ineffectual.¹⁰²

What may we draw from these arguments about the nature of a people? As noted earlier, a people is a legal body and a corporate entity. It has legal competence to make decisions about itself, in the same way as an adult male may make decisions for himself (since, for Grotius, it is made up of adult males); peoples exist within an international system of laws and may choose for themselves how they are to be governed. At the same time, while sovereign authority is created through consent,¹⁰³ Grotius is at pains to show, as noted above, that this does not imply anything about the idea of popular sovereignty, an idea that was gaining currency at the time, particularly through the writings of another Dutch contemporary, Johannes Althusius.¹⁰⁴ Popular government is but one possible outcome of popular consent, and it is not a necessary outcome; more often than not, history and practice shows that peoples have usually been ruled by kings, and their governance has been transferred from one king to another.

Grotius seems to treat the people as a kind of property of the king, but he is aware of this problem, and in order to clarify his argument, he turns to a discussion of Roman property law and its distinction between property and right of ownership.¹⁰⁵ He proposes an analogy between sovereignty and the right of ownership. The king does not possess the people; he possesses sovereign authority. First, he argues that in the case of both ownership and sovereignty, there is a distinction between a thing and its modes of possession. Here, sovereignty is regarded as incorporeal object, and it may be held with

¹⁰² *ibid.*, 111

¹⁰³ *ibid.*, 253

¹⁰⁴ 1557-1638; Althusius is known primarily for his work *Politica Methodice Digesta*, published in 1603

¹⁰⁵ *ibid.*, 116

full right (as when a king subjugates a people in wartime); with usufruct¹⁰⁶ (when a king is chosen to rule, and others succeed him); or with temporary use (as when republican Rome was ruled by a dictator during crises).¹⁰⁷ Second, Grotius makes a distinction between civil liberty and civil subjection, analogous to the Roman distinction between the personal liberty of a property owner and subjection to a master. “Just as personal liberty, then, excludes subjection to a master, so civil liberty excludes subjection to a king or any other form of control properly so called.”¹⁰⁸ It is in this distinction that Grotius finds a basis for popular sovereignty, in the Roman idea of the personal liberty of the adult male property owner, but instead of developing this, he continues his focus on monarchical rule. Finally, Grotius follows this analogy between sovereignty and private ownership by examining the distinction between the right of sovereignty and its exercise; he uses the examples of a king who is an infant, or who has been captured in battle, or who is insane. In all of these instances, the king possesses the right of sovereignty, but he is not able to exercise it, making necessary guardians or regents to exercise power for him.¹⁰⁹ Sovereign governance, whether of a people over itself or by a king, is foremost an exercise of right.

So, given that a people is a legal actor, how should the position of the king be characterized? The king is also a legal actor who possesses rights (whether absolute or partial) over a people; he represents the people at the international level. Grotius at one point goes as far to ask, to whom in a nation does the sovereign power belong, but instead

¹⁰⁶ *usufruct* is a right of property ownership in Roman law in which one has the right to the use (*usus*) and to the fruits of a property (*fructus*), but another person holds actual ownership, i.e. the right to disposal of the property (*abusus*)

¹⁰⁷ *ibid.*, 113-114

¹⁰⁸ *ibid.*, 115

¹⁰⁹ *ibid.*, 137

of directly answering the question (whether it lies in the king or in the people, or derives from some other source), he makes a series of distinctions regarding sovereign power: *principatus* (chief authority) is distinguished from *regnum* (royal power); power that is wholly sovereign from that which is less than sovereign (for example, that of a king versus that of a magistrate under the king); and between sovereign power in itself and its modes of possession (again, using Roman law terms, ownership, usufruct, and temporary use).¹¹⁰ What Grotius seems to be doing is something other than rendering a simple account of the origins and sources of sovereign authority. Instead, he defines the term as a power whose actions are not subject to the legal control of another, actions that cannot be rendered void by the operation of another human will.¹¹¹ He then goes on to say that the state is the common subject of sovereignty.¹¹² Sovereignty becomes a neutral legal term, existing within an international system of laws and rules, and no reference is made to its sources or origins, nor is it infused with any normative content. In contrast to Bodin, whose central effort is to describe the source of source and domestic form of sovereign authority, Grotius's primary concern is to elucidate the laws of war and peace between states, and whether a state is a monarchy or a republic is not important. History demonstrates that sovereign states can take any number of forms, so for Grotius there is simply no point in making arguments about the validity of this or that form of the state when attempting to analyze the legal principles which underlie the interactions between states.

Despite the analogy he suggests above, Grotius distinguishes between sovereignty and private ownership in his discussion of the mode of original acquisition, by which

¹¹⁰ *ibid.*, 113-116

¹¹¹ *ibid.*, 102

¹¹² *ibid.*, 102

private property and sovereign territory are created. Until this point in his discussion, Grotius has not made such a distinction; in fact, it seems as if he was proposing an analogy between sovereignty and private ownership. However, when he begins his treatment of the mode of original acquisition, by which previously unoccupied or unclaimed things are occupied or claimed, he makes the point that a distinction does in fact exist between sovereignty and private ownership. He says that they are both acquired by a single act, by occupation, but the sovereign has power over all things under his occupation, while individuals have only proprietorship over what is allowed by the sovereign.¹¹³ The law of nature establishes the right of ownership, but insofar as individuals submit together under a sovereign power for the protection of their lives and property, then the sovereign authority trumps their rights to privately defend themselves and their property, in the interests of public tranquility.¹¹⁴

Hobbes

Hobbes's *Leviathan* begins as a polemic against a number of conceptions of political theory by way of his own extreme nominalism. Scholasticism, the dominant mode of education and philosophical argument since the 11th century in Europe, is based on deduction from first principles and on the synthesis of conflicting arguments. For Hobbes, first principles have often been shown to be unclear, and this ambiguity can lead to erroneous conclusions in the process of argument. Hobbes seeks to proceed from precise and consistent definitions of his terms, taking his cues from the science of

¹¹³ *ibid.*, 206-207

¹¹⁴ *ibid.*, 139

geometry. Only with precise and consistent definitions throughout the chain of reasoning can one be guaranteed the certainty of the conclusion.¹¹⁵ Hobbes also sees his work as a critique of the centrality of prudence in politics. Prudence is dependent upon experience and memory and upon the ability to realize a design the flux and movement of things. While this may be a laudable quality, it should be not provide the basis of a theory of politics; Hobbes argues that what is needed is a science of politics, which will grant a foundation of certainty.¹¹⁶ Finally, Hobbes is critical of the role of custom. To him, it is ignorance of the causes and the original constitution of right, equity, law, and justice that dispose men to make custom and example the rule of their actions.¹¹⁷ Rejecting these classical and medieval understandings of political life, Hobbes sets out to provide a new foundation for the study of politics in human nature. Political life proceeds from the consequences of human nature. Hobbes begins with the primacy of thoughts and ideas and the motions of the passions, and from there he considers the social significance of both understanding and feeling (in terms of honor, manners, and religious belief). Another facet of Hobbes's work is his religious project. In rejecting Scholasticism (and implicitly, Catholicism), his work moves toward a more naturalistic understanding of God and the Christian religion, and perhaps more importantly, the role of religion in stabilizing the political order. This explains his approval of the Church of England, which was under the authority of the King of England.

Hobbes's work can be clearly placed in the social contract tradition. For him, people are already sociable, possessing language and the ability to reason, but they originally live in a conflict-ridden state of nature. By using their reason, human beings

¹¹⁵ Thomas Hobbes, *Leviathan*, ed. Richard Tuck (New York: Cambridge University Press, 1996), 33

¹¹⁶ *ibid.*, 23, 36

¹¹⁷ *ibid.*, 73

will always seek to protect themselves and their possessions, and for Hobbes the most reasonable way of ensuring this protection is within a civil society and under a sovereign authority, under which all agree by way of a covenant or contract.

Within Hobbes's system of thought, the concept of authority is necessarily connected with the concepts of representation, personhood, and covenant. A person is either one whose words and actions are considered his own or which represent the words and actions of others.¹¹⁸ The word "person" comes from the original Latin *persona*, a disguise, referring either to one who acts on the stage or in a court of law. The *persona* is the same as to be an actor, and to act, or to personate, or to represent, is to bear a person.¹¹⁹ In the case of artificial persons (corporations, or corporate persons), the actor's words and actions may be owned by those whom he represents. The person is always an actor, while those who actually own the words and actions are the *author* of them; thus, the actor always acts by authority.¹²⁰ When an actor makes a covenant, he binds the authority that he represents; but no authority is obliged by any covenant that he did not authorize or which is made against himself, and the actor himself is similarly not bound by covenants that violate the law of nature.¹²¹ Hobbes discusses covenants in Chapter 14, as the second of his laws of nature, which describes how men give up their original natural right in exchange for peace. This is done by way of a covenant, an exchange for mutual good. In the covenant of which Hobbes speaks, to lay down a right creates an obligation and a bond (in other words, a duty), and this is done by some means of declaration (express consent). Also, to transfer a right is to transfer the means of

¹¹⁸ *ibid.*, 111

¹¹⁹ *ibid.*, 112

¹²⁰ *ibid.*, 112

¹²¹ *ibid.*, 112-113

enjoying it. “[They] that give to a man the right of government in sovereignty, are understood to give him the right of levying money to maintain soldiers; and of appointing magistrates for the administration of justice.”¹²²

This leads to an interesting question. Hobbes notes that, in order to ensure that covenants are performed, there must already exist a common coercive power over the two parties, because trust in itself is not enough.¹²³ If this is the case, then how was the original social covenant created? In a state of nature, there is by definition no confidence or trust, so how is it possible for men to even come into agreement with one another, except through the use of force? Hobbes assumes that human beings are reasonable enough and tired enough of the state of war that they will exchange their natural right for something more secure for themselves.

With the above definitions in place, Hobbes then proceeds to describe the process by which sovereignty is created. Men will

confer all their power and strength upon one man, or upon one assembly of men, that may reduce all their wills, by plurality of voices, unto one will; which is as much to say, to appoint one man, or assembly of men, to bear their person; and every one to own, and acknowledge himself to be the author of whatsoever he that so beareth their person, shall act or cause to be acted, in those things which concern the common peace and safety; and therein to submit their wills, every one to his will, and their judgments to his judgment.¹²⁴

This conferral by the multitude to a few or to one in the interests of the common good or common peace and safety is the process of representation or authorization writ large. In this case, it is an absolute and irrevocable grant; the subjects may not decide to change the form of government or free themselves from their subjection. They effectively turn their lives, strengths, and judgment over to the sovereign. The subjects’ liberty becomes

¹²² *ibid.*, 97

¹²³ *ibid.*, 96

¹²⁴ *ibid.*, 120

what the sovereign himself permits.¹²⁵ “[Nothing] the sovereign representative can do to a subject, on what pretense soever, can properly be called injustice, or injury; because every subject is author of every act the sovereign doth; so that he never wanteth right to anything, otherwise, than as he himself is the subject of God, and bound thereby to observe the laws of nature.”¹²⁶ At the same time, Hobbes carefully examines the implications of this statement. Earlier, he pointed out that covenants are void which seek to transfer a man’s right to save himself from death, injury, and imprisonment.¹²⁷ Thus, there are some conditions under which a subject is released from his obedience to his sovereign, particularly those involving the risk or harm. This in turn raises some interesting issues: What about military service? What about punishments for crimes involving prison sentences or the death penalty? The individual retains the right to refuse (and therefore suffer the consequences of refusal), but the sovereign has absolute control over the peace and safety of the commonwealth, and he is the sole judge of what is necessary for the peace and defense of his subjects.¹²⁸

The grant of these sovereign rights is irrevocable, and the rights themselves are indivisible and non-transferable; this, Hobbes argues, is central to the peace and security of the commonwealth, and this can be witnessed from Hobbes’ experience of civil wars in England.¹²⁹ Hobbes follows this with a consideration of the dangers of such an unlimited fount of power, weighing it against the miseries produced by civil war, the human condition, and from “masterless men.” He concludes that any criticism of absolute power that proceeds from a defense of human freedom amounts to a refusal to

¹²⁵ *ibid.*, 148

¹²⁶ *ibid.*, 148

¹²⁷ *ibid.*, 98

¹²⁸ *ibid.*, 124-125

¹²⁹ *ibid.*, 127

see that, on their own, people will not contribute to the common defense, because they care only for themselves and do not see the long-term consequences of their actions.¹³⁰

Hobbes distinguishes between the right of nature (*jus naturale*) and the law of nature (*lex naturalis*). The right of nature is the liberty each man has to preserve himself; in pursuing self-preservation, he has the liberty to do what he will with other men and their possessions. A law of nature is a general rule discovered by reason which indicates that which is a man is forbidden to do, specifically, to harm himself or to allow harm to come upon himself.¹³¹ Hobbes does not favor the right of nature as a positive condition but instead views it as the cause of the negative situation which makes necessary civil government. Without restraint, the right of nature inevitably gives rise to a state of war, and people are wholly insecure. In consulting reason, people are first and foremost counseled to find the best way to preserve their lives, and if not through peaceful means, then through whatever advantages may come by way of war.¹³²

Within the law of nature, men are commanded to seek peace amongst themselves. If this condition prevails, then there follows, as noted, the second law of nature, in which men are counseled to seek peace by means of giving up their rights of nature and retaining only as much liberty against others as he would allow himself from others. Hobbes says that this is a restatement of the Law of the Gospel: whatever you want others to do to you, do to them. The law of nature points to the covenant as the only sure means of preserving life and security. The third law of nature requires that all men observe the covenants they make. Hobbes says that this is the fundamental meaning of justice, to keep good faith, and it is the coercive power created by the surrender of the right of

¹³⁰ *ibid.*, 129

¹³¹ *ibid.*, 91

¹³² *ibid.*, 91-92

nature that creates the distinction between justice and injustice.¹³³ Hobbes divides the laws of nature into nineteen topics, but they all fall into a number of general categories (peace, good faith, justice, gratitude, equality, and equity); they are all ultimately reducible to the Golden Rule. Without the existence of a sovereign power, these laws of nature do not hold much sway over the hearts of men. Without power and a source of fear, men are wont to continue following their passions and the right of nature.¹³⁴ Thus, without fear and subjection, there is no security and no peace. The laws of nature by themselves have no “teeth” without violence to back them up, because in nature, humans do not follow the law of nature, but rather natural right alone.

Popular Sovereignty

As noted above, the idea of popular sovereignty was beginning to gain currency by the end of the 17th century, in the work in the John Locke, and in the 18th century, in the works of Jean-Jacques Rousseau and the writers of the Federalist Papers. Their defense of popular sovereignty was not an equivocal support for democratic government but rather a rejection of monarchical supremacy, an increased emphasis on the rights of property owners versus the privileges of titled nobility, and a focus on the importance of settled constitutional arrangements in the body politic. These men sought to adapt the idea of sovereign authority away from a monarchical basis and absolutist rule to a more popular basis and toward more limited powers, particularly in the domestic sphere. During this process of adaptation, they retained many of the features of sovereign

¹³³ *ibid.*, 100-101

¹³⁴ *ibid.*, 117

authority as developed in the earlier writers just examined, in particular, the inability to limit sovereign power in instances of emergency or national threat.

A recurring feature of popular sovereignty is the difficulty of reconciling the inevitable rise of dissent from within the body of the people with the need to maintain public order. As noted, these theorists were not fans of democracy as understood in the sense contemporary sense of universal suffrage and participation in government; instead, they set strict limits on the role of factions and parties and the expression of opinion, and they exhibited a profound distrust of popular political movements. The “popular” aspect of popular sovereignty referred instead to a more abstract sense of the public good, not an authority arising directly out of the will of the people *en masse* or as expressed in what today would be called public opinion. Instead, democratic impulses within the political community were seen more as threats to public order; the body of the people was as much distrusted as the members of government. Because of this, the concept of sovereign authority acquires interesting shades of meaning.

Locke

The work of John Locke, particularly his *Second Treatise of Government*, is usually cited as a defense of individual rights and popular sovereignty against absolutist government. While this may be the case, Locke’s work still adheres to the same formal definition of sovereignty outlined in the works of Bodin, Grotius, and Hobbes. Locke is unique in the history of the social contract tradition in making property rights absolute; for him, the task of government is to protect individual property. “Hence it is evident,

that *absolute monarchy*, which by some men is counted the only government in the world, is indeed *inconsistent with civil society*, and so can be no form of civil-government at all”.¹³⁵ Locke is also unique in that he highlights a separation between legislative and executive authorities, leaving the supreme authority in the hands of the legislative.

“[There] can be but *one supreme power*, which is *the legislative*, to which all the rest are and must be subordinate, yet the legislative being only a fiduciary power to act for certain ends, there remains still *in the people a supreme power to remove or alter the legislative*, when they find the *legislative act* contrary to the trust reposed in them”.¹³⁶

At the same time, Locke invests the executive with the power of prerogative, which is the “power to act according to discretion, for the public good, without the prescription of law, and sometimes even against it.”¹³⁷ Ordinarily, prerogative power is used for areas in which the law is silent or to call the legislative to consider issues at hand. However, the potential for abuse of this power exists.

“But *who shall judge* when this power is made a right use of? I answer: between an executive in being, with such a prerogative, and a legislative that depends upon his will for their convening, there can be no *judge on earth*; as there can be none between the legislative and the people, should either the executive, or the legislative, when they have the power their hands, design, or go about to enslave or destroy them. The people have no other remedy in this, as in all other cases where they have no judge on earth, but to *appeal to heaven* . . . where the body of the people, or any single man, is deprived of their right, or is under the exercise of a power without right, and have no appeal on earth, then they have a liberty to appeal to heaven . . . “¹³⁸

Locke supports the right of rebellion on the part of the people against unjust government, but again he acknowledges that no judge on earth may adjudicate such a conflict and that

¹³⁵ John Locke, *Second Treatise of Government*, ed. C. B. Macpherson (Indianapolis: Hackett Publishing Company, 1980), 48

¹³⁶ *ibid*, 77-78

¹³⁷ *ibid*, 84

¹³⁸ *ibid*, 87

it is left to war to decide, similar to the way Grotius looks upon just war as part of an adjudication process between states. “[Force] between either persons, who have no known superior on earth, or which permits no appeal to a judge on earth, being properly a state of war, wherein the appeal lies only to heaven; and in that state the *injured party must judge* for himself, when he thinks fit to make use of that appeal, and put himself upon it.”¹³⁹

Rousseau

The idea of popular sovereignty is most fully developed in Jean-Jacques Rousseau’s *Of the Social Contract*. The creation of a people as a people is the foundational act of the political community. Like Hobbes, and unlike Locke, individuals cede *all* of their rights and powers toward the creation of the public person; this process has to take place as a unanimous act in order to encompass all who wish to be full members of the community.¹⁴⁰ Out of this act is created the *general will*, which provides the body politic with a common self and direction.¹⁴¹

Since sovereignty is created by the individuals who make it up, Rousseau goes on to argue that the sovereign cannot have an interest that is contrary to their own, nor can it ever harm them in particular. “The sovereign, by the mere fact that it exists, is always all that it should be.”¹⁴² This is because, in binding themselves by means of the social contract, the people create a two-fold commitment *within* themselves: one as members of

¹³⁹ *ibid*, 123

¹⁴⁰ Jean-Jacques Rousseau, *The Basic Political Writings*. trans. Donald A. Cress (Indianapolis: Hackett Publishing Company, 1987), 147

¹⁴¹ *ibid*, 148

¹⁴² *ibid.*, 150

the sovereign in relation to themselves as private individuals; another as members of the state in relation to the sovereign itself.¹⁴³ In becoming a party to the social contract that creates the sovereign, each person becomes a private individual (who participates in the social contract), a member of the sovereign (Rousseau calls him a citizen) *and* a subject (that is, subject to the laws of the state). Because each person embodies these three identities, the sovereign (the public person) is, by definition, unable to act wrongly against the individuals who make it up. At the same time, an individual's private interest can run be contrary to the interests of the general will¹⁴⁴ as can a majority of concurring private interests.¹⁴⁵ This is because "what makes the will general is not so much the number of votes as the common interest that unites them, for in this institution each person necessarily submits himself to the conditions he imposes on others".¹⁴⁶ The general will rises above a simple majority decision, encompassing the interests common to and every citizen within the body politic.

Rousseau emphasizes the difference between sovereignty and government. For him, the social contract creates a people, but it is a people that create a government. "Power can perfectly well be transmitted, but not the will."¹⁴⁷ Governments have to be adapted to the character of the people they serve, and to this end, Rousseau points to the need for an outside legislator to draw up a set of fundamental laws for them, including the form of government.¹⁴⁸ Government acts as an instrument of mediation and communication, forming a link between the people in their capacity as sovereign and the

¹⁴³ Rousseau defines the state here as the "passive" aspect of the body politic, in contrast with sovereignty as its "active" aspect; *ibid.*, 148-149

¹⁴⁴ *ibid.*, 150

¹⁴⁵ *ibid.*, 155-156

¹⁴⁶ *ibid.*, 158

¹⁴⁷ *ibid.*, 153

¹⁴⁸ *ibid.*, 162-165

people in their capacity as subjects. “His force [the prince, Rousseau’s generic term for administration] is merely the public force concentrated in him.”¹⁴⁹ Rousseau argues that the government itself is in continual conflict with sovereign authority and will always prove to be its undoing, either through the reduction of the base of participation from democracy to monarchy, or through the attempted usurpation of sovereignty by the government, which destroys the social contract and releases all individuals from the general will.¹⁵⁰

The American Founding

The supporters of the American Revolution and the framers of the Constitution fall within the social contract tradition and embrace the tenants of popular sovereignty as both reason for their support of the revolution and as a basis for the new American government. Both in the Declaration of Independence and the Preamble to the Constitution, Thomas Jefferson and James Madison lay the foundations of political authority squarely in the hands of the people: “[A]ll men are created equal . . . they are endowed by their Creator with certain unalienable Rights . . . to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed”;¹⁵¹ and “We the People of the United States . . . do ordain and establish this Constitution”.¹⁵² These same considerations are also present in the *The Federalist*

¹⁴⁹ *ibid.*, 176

¹⁵⁰ *ibid.*, 192

¹⁵¹ Thomas Jefferson, “The Declaration of Independence,”

http://www.archives.gov/exhibits/charters/declaration_transcript.html , accessed 9/5/08

¹⁵² “The Constitution of the United States,”

http://www.archives.gov/exhibits/charters/constitution_transcript.html, access 95/08

Papers, when James Madison notes in No. 49 that “the people are the only legitimate fountain of power, and it is from them that the constitutional charter, under which the several branches of government hold their power, is derived.”¹⁵³

Concomitant with popular sovereignty in the American context was the idea of limited government. What Americans of the Revolutionary period experienced as absolutist and arbitrary government from the English Crown led them to embrace a number of institutional features which sought to curb the ability of the government to impinge the free exercise of basic rights.

The regular distribution of power into distinct departments; the introduction of legislative checks and balances; the institution of courts composed of judges holding their offices during good behavior; the representation of the people in the legislature by deputies of their own election: these are wholly new discoveries, or have made their principal progress towards perfection in modern times. They are means, and powerful means, by which the excellencies of republican government may be retained and its imperfections lessened or avoided.¹⁵⁴

While limited government carried the more general meaning of restraints on the exercise of a government’s power, it also sought to curb the “passions” of the people themselves. Although the people remained the source of a government’s authority, the smooth, efficient, and regular exercise of power required that the tendency of people to develop factions,¹⁵⁵ foment revolutions,¹⁵⁶ and continually change the laws be limited through these same institutional means. Infamously, Madison remarked in *Federalist* No. 51, “you must first enable the government to control the governed; and in the next place oblige it to control itself.”¹⁵⁷

¹⁵³ ed. Clinton Rossiter (New York: Penguin Publishers, 1961), 313-314

¹⁵⁴ *ibid.*, 72-73

¹⁵⁵ discussed at length by Madison in *Federalist* No. 10, *ibid.*, 77-84

¹⁵⁶ *ibid.*, 116-118

¹⁵⁷ *ibid.*, 322

The revolutionaries and the Framers had to contend with the necessity of providing security for the people, the highest end of a government that aimed at the protection of individual rights. As noted above, domestic security was as much of a concern as was external threats, particularly with recent memories of both the war for independence (ending in 1782) and Shay's Rebellion (1787). Internal tranquility, it was hoped, would be managed effectively through the mechanisms of limited government, while the threat posed by external enemies would be dealt with through both diplomacy and the creation of a national army. Alexander Hamilton also considers the existence of a standing army as a deterrent against future domestic problems.¹⁵⁸ Common defense under the new constitutional arrangements is of such importance that Hamilton suggests that no limits be put upon the authority necessary to carry them out. "The circumstances that endanger the safety of the nations are infinite, and for this reason no constitutional shackles can wisely be imposed on the power to which the care of it is committed."¹⁵⁹

Conclusion

As I argued in the last chapter, the concept of sovereignty emerged from the historical conflicts between Church, Empires, and the early monarchical states. By the late 16th and early 17th centuries, we can see an effective break taking place between the national governments of France, the Dutch Republic, and England from the Catholic Church. While this change was less pronounced in strongly Catholic areas such as Spain, Portugal, Italy, and central Europe under the control of the Habsburgs, it is from these

¹⁵⁸ *ibid.*, 166-167

¹⁵⁹ *ibid.*, 153

other regions that we see the most extensive development of the idea of the sovereign authority of the state.¹⁶⁰ The leaders of the national governments of France, the Dutch Republic, and England realized they were going to have to take a stronger hand in maintaining civil order after the rise of Protestant sects, and this concern is reflected in the works of Bodin, Hobbes, and Rousseau. In France, where the Catholic Church was the national church but remained subordinate to the authority of the French monarchy, Bodin argued for strengthening the king's powers when it came to dealing with the Huguenots and settling matters of religious dispute. The Dutch Republic freed itself from Spanish and Catholic control, and afterwards its government was seized by Calvinists; Grotius, in turn, sought to understand sovereign control in terms of law and constitutional order instead of by particular religious sects. In England, the Anglican Church was subordinate to the Crown, and Hobbes took upon himself the task of redefining the powers of the Crown in order to deal with what he took to be predations by the Puritan-controlled Parliament.

This historical era was also beginning the process of exploration and colonization around the globe, and this led to the need for an idea of an international system in which national states and other entities interact with one another. The interests of Western Europeans were no longer confined to the European continent itself but also spread to far-flung areas of the world where European influence did not exist at the time. They began to encounter a multitude of different peoples, so over time this made necessary some centralized concept of foreign policy, and it fell here to the national government, whether

¹⁶⁰ however, it is interesting to note that the thinkers associated with the Salamanca School in Spain (de Vittoria, Suarez, de la Casas) contributed a great deal to the issue of sovereignty and international law in the 16th century. It is also interesting to note that we do not see a great deal of this development in the Scandinavian countries, probably due to the close relationship there between the state and the national churches after the Reformation.

monarchy or republic, to assume the decision-making process regarding foreign interests.¹⁶¹ At the same time, the exhausted governments of Europe used this foreign policy-making process to deal with the consequences of the Thirty Years' War, formulating the Peace of Westphalia in 1648. Indeed, it fell to the heads of national governments to actively formulate the idea of what was in the national interest. Thus, at the beginning of the modern era, the national state becomes the center of sovereign authority, both at the domestic level and at the international level.

Since Bodin, Grotius, and Hobbes were now free to think of an independent sovereign authority located in the state, they had to rethink the relationship between the king's authority and both natural law and divine law. Here, Bodin is unique in that he does not rely on the arguments of natural law and divine law to buttress the sovereign's authority; instead, he sees them as self-imposed limits on the king's power as sovereign. A true and responsible monarch, in Bodin's world, would graciously take those upon himself as befitting a Christian king, but they are not *necessary* for the exercise of sovereign power. Natural law takes a much more prominent role in the works of Grotius and Hobbes, but it is more and more distant from its medieval Christian form. For Grotius, natural law, particularly as it is expressed through Roman law, is the foundation of sovereign authority and international law; while for Hobbes, natural law is viewed as inherent in the process of reasoning that leads humanity out of the state of nature and towards the creation of sovereign power. Hobbes also makes natural law coextensive with the Law of the Christian Gospel, arguing that they are two different means of making the same point. Divine law for Grotius is an important point of reference,

¹⁶¹ Exploration and colonization was carried out largely by means of chartered companies operating semi-independently from the government; also, in France, the Catholic Church had a large hand in the colonization process in its missionary work among native peoples.

particularly in elaborating upon the principles of war and peace, and it serves to buttress his arguments from natural law. The important element being registered here by all three thinkers is the slow un-linking of state authority from moral and ethical considerations. During the feudal era in Europe, the Church argued that natural and divine law was inherent in the exercise of sovereign authority by both Church and King. By the early modern era, natural law and divine law no longer had any means of enforcement apart from the authority of the state, which was now believed to exist independently from it.

Bodin, Grotius, and Hobbes also shared a general rejection of popular rule. The idea of popular sovereignty was beginning to gain currency in Western Europe during this era, but it would not be more fully developed until the late 17th century in the works of Locke and in the 18th century in Rousseau and in the leaders of the American Revolution. For Bodin, popular rule was simply unthinkable within his understanding of sovereignty; as noted above, how would it be possible for one to be able to both give commands and obey them? Grotius was not outright opposed to popular rule, but he was no advocate of it either, and he presents a great many arguments against it in his discussions of sovereignty. In the work of Hobbes, power may not be divided between the ruler and the people, as that undermines sovereign authority. Related to this point is their support for the status quo governments of their time. Both in their personal lives and in their works, these three thinkers sought to uphold the royal governments of their national states. Bodin was a staunch supporter of the French monarchy; Grotius remained a strong supporter of the Dutch government of the stadtholders as it had existed prior to the Calvinist coup in which he was imprisoned; and Hobbes sought a

return to preeminence of the Crown in English government over the Parliament after the Civil War.

Finally, while none of them sought revolutionary change in the political order, they *were* revolutionary in terms of their methodologies for understanding politics. Bodin was directly influenced by the historical school of jurisprudence, which grew out of Renaissance criticism of Roman law (at least as understood in medieval times) as flawed and ignorant of the laws of other ages and peoples. Grotius, in contrast, remained within the classical school of jurisprudence, at the same time acknowledging history and non-European law as important for the natural law tradition and extending the reach of Roman law concepts to the international level. Hobbes sought a fundamental rethinking of how to understand politics, rejecting Scholastic deduction from religious and philosophical first principles and turning toward mathematics, geometry, and science for certainty of method and toward human nature as the foundation of political thought.

The proponents of popular sovereignty relocated the basis of political authority away from monarchy and royalty and toward the people. The constitutional revolution of the 17th and 18th century sought to impose definite limits on the power of the monarchy and to include the interests of rights-bearing property holders into the sphere of government. No long was it trusted that the king would rule in the interests of all; instead, the rise of individualism and the idea of individual rights became the core of theories of popular sovereignty, and the idea of a binding legal contract between two parties became the model of political community. Hobbes popularized this idea, and from there it received fuller development in the work of Locke, Rousseau, and the American writers.

Despite this seeming revolution in sovereign authority, all of these writers remained deeply distrustful of the people themselves.¹⁶² While ultimate authority may indeed originate in the members of a political community, their actual participation in the resultant government remained limited. For Locke, legislative authority, the embodiment of sovereignty, is limited to periodic meetings, while the executive authority is always active;¹⁶³ Locke's executive also possessed prerogative power, which acted as a kind of blanket grant of power to deal with political issues where the law had been silent. Rousseau's conception of the sovereignty of the people is less limited. Although the people require an outside legislator to create fundamental laws for them, the people in their role as sovereign authority meet periodically to make law for themselves; government administration, as a separate entity, is a recipient of the sovereign's power to execute the laws on a daily basis. However, in order for Rousseau's republic to work effectively, it requires a consistent common interest among the people in order to produce the general will, and this is to be ensured by maintaining a high degree of cultural and social homogeneity, as well as by keeping the republic small in area and population. The American revolutionaries and framers of the Constitution seek to limit the people's participation in government through divided government and a strong standing national army. Whereas for Rousseau, social and political homogeneity was practically necessary, the framers of the American Constitution assumed the relative impossibility of creating a common interest across the original thirteen colonies.

¹⁶² Edmund Morgan argues in *Inventing the People: The Rise of Popular Sovereignty in England and America* (New York: W. W. Norton & Co., 1988) that the very idea of "the people" in popular sovereignty is itself a fiction, created by English members of Parliament in the early 17th century to oppose what they saw as the abuse of the monarchy's authority.

¹⁶³ Locke, 76

For both the proponents of monarchical sovereignty and those of popular sovereignty, sovereignty turns out to be something deeply paradoxical. Hobbes proposed that all men possess the unalienable right to defend their own lives, while sovereign authority had the ultimate power over life and death as it sees fit. Grotius provided a number of bases for popular sovereignty but then rescinded them in his discussion of the monarchy. Locke argued for the centrality of individual rights as the basis for government but then provided no normative basis to defend them, apart from violent revolution, when absolute power tries to usurp the government. Rousseau's concept of popular sovereignty assumed its own demise over time, based on the inherent conflict between the sovereign authority and the administration of government, which often works against the general will. The Americans spoke of the inherent right of revolt, but the defenders of the new constitution saw the need to put down domestic insurrection. Only Bodin escaped from these paradoxes relatively unscathed, because his theory of sovereignty did not rest on the foundations of right or the social contract.

Although the concept of sovereignty has generally come to be accepted in the West in its popular form as the basis for political rule, what I have sought to emphasize in this chapter is that the *idea* of sovereignty does not undergo a drastic change, whether in its monarchical or popular form. In the early centuries of the modern era in the West, the meaning of sovereignty was essentially defined and has changed little since then, and it has become a permanent fixture of Western political thought. Sovereignty is a mode of authority which stands alone, once constituted. It remains autonomous and indivisible and answers to no authority higher than itself. In modernity, it is difficult to come up with any such higher political authority. This is the consequence of the national state in

the West becoming independent of any religious associations (even if certain countries retained national churches, these still remained subordinate to state authority) and existing apart from any imperial government (especially after the decline of the Habsburg's Holy Roman Empire).

Although individual rights, and later, human rights, have been elaborated which may not theoretically be violated by sovereignty authority, in all instances, these rights exist only within the context of the sovereign's authority, and while in international law they are designated as non-derogable, they exist at the discretion of the sovereign; the word of the sovereign is primary law. Rights may be suspended in times of crisis. Italian philosopher Giorgio Agamben argues that this is, in fact, the very nature of political order in the contemporary world; this "clause" is built into the very definition of sovereignty.¹⁶⁴ When it comes to conceptualizing political authority in the world today, sovereignty is the dominant mode of understanding it. With the waning of religious authority and ideas such as natural law as a check on sovereignty, the national state remains unchecked by anything except other states. When we speak of the domestic sphere, democratic states are considered as embodiments of popular sovereignty, while non-democratic states similarly consider their governments as sovereign over their own people and territory. In the international sphere, states with standing in the world community are considered sovereign in relation to one another.

Sovereign authority, considered in this light, exists to a) provide the primary source of domestic stability, and b) provide the primary source of protection against

¹⁶⁴ *State of Exception*, trans. Kevin Attell (Chicago: University of Chicago Press, 2005), 24-25. This argument is also developed in his *Homo Sacer: Sovereign Power and Bare Life* (Stanford: Stanford University Press, 1995) and *Remnants of Auschwitz: The Witness and the Archive* (Cambridge: Zone Books, 2002).

external threats. The sovereign state has provided the foundation for the extensive technological, economic, and social developments of the modern world, and in democratic states, it has allowed for their continued existence. At the same time, this authority has been complicit in numerous atrocities and crimes against humanity in the modern era. It has allowed states to engage in crimes against humanity with impunity, since there is no greater authority to step in and prevent them from being undertaken. On the one hand, once a sovereign government begins to commit atrocities within its own territory, particularly when it does so against what it identifies as an internal threat, there is nothing citizens can do to effectively stop it. The state, sole repository of sovereign authority, retains monopoly control over the means of violence. On the other hand, it is a central norm of international law that no state may interfere in the internal affairs of another state (non-intervention). Although this norm came under renewed scrutiny beginning in the 1990s and will be examined in greater depth later in this dissertation, it remains a defining element in the international system.

CHAPTER 4
CASE STUDIES
Introduction

All national states that claim sovereignty today share certain basic characteristics: each has a center of political power, usually a national government administration; they have defined territorial boundaries; they have a population that lives within those boundaries and whose membership is defined by internal rules of citizenship; and they are recognized as sovereign states by other sovereign states. As noted in the first chapter, this system of sovereign states did not come into existence *ex nihilo* but rather developed out of the decline of the feudal system that existed across Western Europe before the 1500s. These early sovereign states were monarchies in form, but following the constitutional revolution in the 18th century, the source of sovereignty was relocated in some countries in the body of the people. During those same centuries, the colonial enterprises of the European states began to encompass the globe, and by the middle of the 20th century, the entire world belonged to this system of sovereign states.

While all states¹⁶⁵ in the international community share these basic features, the differences between states outweigh what they have in common. Each state has a unique history, or rather, a set of multiple and overlapping histories, involving both the peoples within the borders of the state as well as those of neighboring states. States differ greatly in their constitutional arrangements, in their levels of economic development, in population density, in urbanization, in ethnic and religious composition, to list just a few

¹⁶⁵ While it may be argued that “failed states” do not meet those criteria, the system of international norms regarding sovereignty and the efforts of the international community, however half-hearted, aim at restoring and maintaining sovereignty to those countries.

of the characteristics. While certain regions of the world may share common features, whether religion (Catholic Christianity in Latin America, Sunni Islam in North Africa and the Middle East, Buddhism throughout Asia) or political institutions (social democracy in Western Europe, councils of village elders in Sub-Sahara Africa, the mullah in predominantly Muslim countries), each country has its own unique set of histories and institutions.

In order to ascertain the precise role sovereign state power has played in the crimes against humanity that have occurred in the latter part of the Twentieth Century, it seems important to take a closer look at specific instances of those crimes and the historical and political context in which they took place. To that end, I have constructed a number of case studies of relevant countries. In particular, I examine the cases of Cambodia during the Khmer Rouge regime; Argentina under the military *junta* from 1976 to 1983; the breakup of the former Yugoslavia and the atrocities committed during the subsequent civil conflicts; the genocide in Rwanda in 1994; and the ongoing conflict in western Sudan in Darfur, which began in 2003.

I have selected these cases according to a number of different criteria. The first thing I wanted to do was to examine a number of cases that are geographically, historically, and culturally different from one another. This allowed me to examine the role of sovereign state power in the commission of atrocities under a number of different circumstances. Second, I wanted to situate these cases historically after World War II, the creation of the United Nations, and the adoption of an accepted worldwide doctrine of human rights; I wanted to deal with recent cases of atrocity, against the backdrop of a world community that espoused at least basic ideals of acceptable and unacceptable

treatment by political regimes of their citizens, embodied in the United Nations' Universal Declaration of Human Rights and subsequent human rights' treaties. Finally, I chose cases which were extreme examples of crimes against humanity, where personal injuries were extensive, everyday life was disrupted, and torture and murder ran into the thousands of casualties. At the same time, because of limited time and space, I had to leave out other cases that fit these criteria, such as the murder of the Kurds in Iraq in the late 1980s and of the East Timorese by the Indonesian government in the 1990s.

In order to examine the role of sovereign state power, I focus on those institutions and practices of state power that flow from the (presumed) legitimacy of the state. In most of these cases, crimes against humanity have been justified in the name of protecting the security of the country and eliminating threats to the population. To this end, the means of state power are employed, and this includes both military and police power, usually at the behest of a given state's executive authorities. As the reader will see in these case studies, state authorities that commit these crimes often go to great lengths to cover up their crimes if they cannot find adequate justification for them. In times of civil crisis, the constitutional order is usually either suspended or ignored, so the role of executive authority becomes less clear; also, those extra-governmental groups struggling with the state's authority often seek to gain control of the state themselves. Sovereign power itself comes up for grabs, and atrocities have often been committed under these circumstances. Those groups that do assume control of the sovereign state institutions also often justify the atrocities they commit as a way of protecting the "new" order or a restoration of an "old" order. This struggle for control of sovereign power should be kept in mind while reading these case studies.

The format of these case studies proceeds as follows. I present a short narrative for each country while highlighting elements of both the country's institutions of sovereign state power and the country's political culture (explained below). Each case is chronological; most of the historical detail follows after World War Two, but there is considerable attention devoted to the earlier history of the political development of each country. Within the chronology, I make digressions into the deeper facets of the country's sovereign institutions and practices and political culture. The chronology finishes after the atrocities have been committed. Following the case studies, I make an analysis of all of the case studies, examining the role of both political culture and sovereign state power in the commission of those crimes against humanity. This analysis looks specifically at the roles of identity, civil conflict, and constitutional order and their relationships to both political culture and sovereign state power.

These cases have been chosen on the basis of the issues to be explained, massive atrocities and crimes against humanity, so it may be argued that they run the risk of selection bias; that is, these examples involve occasions in which crimes against humanity have been committed on a wide-scale, and this study seeks to understand the role of sovereign state power in those crimes. The risk involved here is that I will choose cases that will only highlight the role of sovereign state power and that I will interpret the events in light of that power and will thus avoid considering other factors that might better explain why and how these crimes against humanity have taken place. In order to avoid this dilemma, I concomitantly examine the role of a country's political culture in the commission of these atrocities, looking at factors that exist outside of or beyond the institutions of sovereign state power that have made a contribution.

Political culture is an analytic concept that seeks to capture the subjective elements of political life, beyond institutions: values, beliefs, rituals, symbols, and ideals. The role played by political culture in countries where crimes against humanity are committed is complex and varied, so this dissertation examines only the most obvious elements of that influence and draws only tentative conclusions about causation. In the concluding analysis of the case studies, I make some brief remarks about the relationship between state sovereignty and political culture, arguing that the two concepts share a mutually reinforcing relationship in defining the limits (or lack thereof) in the political life of a country.

The concept of political culture made its first appearance in the work of Gabriel Almond in the mid-1950s and 1960s¹⁶⁶, where it was used as a way of making sense of the differences between civic institutions in the United States and other countries. Since that time, a number of approaches toward the analysis of political culture has developed within political science, drawing from the resources of other social science disciplines, including anthropology, sociology, psychology, and economics.¹⁶⁷ Because of this, no single methodological approach to the study of political culture exists. Indeed, as one scholar suggested, “Political culture remains a suggestive rather than a scientific concept.”¹⁶⁸

The concept of political culture sets out to answer a number of questions: “how individuals and/or groups are socialized, how different individuals organize their thinking

¹⁶⁶ “Comparative Political Systems,” *Journal of Politics* XVIII, August 1956: 391- 409; see also, Gabriel Almond and Sidney Verba, *The Civic Culture: Political Attitudes and Democracy in Five Nations* (Boston, 1963)

¹⁶⁷ Richard W. Wilson, “The Many Voices of Political Culture: Assessing Different Approaches,” *World Politics* 52.2 (2000): 246-273

¹⁶⁸ Stephen Chilton, *Grounding Political Development* (Boulder, Co.: Lynne Rienner Publishers, 1991), 57

about rules and norms, how discourse affects the legitimacy of political institutions, how and why individuals orient their thinking and communications in terms of salient myths, rituals, and symbols, and how moral criteria are apprehended and with what consequences for political behavior.”¹⁶⁹ In my approach to political culture for this dissertation, I am not going to adopt a specific theory of political culture, but instead I am going to answer a number of pertinent questions in each case study that will highlight the features of that country’s political culture as it relates to the crimes committed against humanity. These questions include:

- What are the sources of state legitimacy? What are the boundaries of state power? What are the ways in which state power may be challenged, criticized and changed (e. g., elections, a free press, political parties, amendments, and checks and balances within government, just to name a few of the ways)?
- Do the moral values of a country place a high value on basic human rights? On individual rights? Does the individual have an intrinsic value, or is he or she viewed only or largely as an extension of the community?
- Do there exist institutions that are independent of the state? Is there is a strong civil social? What is the level of social integration within the country?

For the purposes of these case studies, I am interested in looking at the political culture of the country which existed before and leading up to the atrocities under examination. The eras following each set of atrocities have been extremely turbulent in terms of rebuilding the countries as well as creating punitive measures for those involved in the crimes against humanity, which in turn has often led to wholesale reorderings of the countries’

¹⁶⁹ Wilson, 247

political culture, and it is simply beyond the reach of this study to take that history and activity into account. The reader may also note that I am leaving out some important aspects of political culture such as political socialization and the study of the role of specific myths and symbols within each country. This is again largely due to constraints of time and space, and a more robust study would take note of them.

Cambodia

For most of its long political history, Cambodia was a hereditary monarchy, and the majority of its people lived in loosely-organized villages centered on subsistence rice farming. These villages were informally governed by elder men, and the life of the king and the court were far away from their daily concerns.¹⁷⁰ The only indigenous political models that the Cambodian people had were those of the monarchy and the mandarins.¹⁷¹ Political power was exercised from the monarchy through patronage networks, called *k'sae*, throughout the countryside; each leader in the *k'sae*, or “string,” interpreted orders as he saw fit, with a greater or lesser degree of severity, and this practice continued throughout the Khmer Rouge period.¹⁷² Traditionally, political power in Cambodia was measured, not by control over territory, but was based on the number of people over which one exercised control through the patronage system.¹⁷³ Whether with the monarchy or with guerrilla groups in the Twentieth Century, those in political authority focused less on maintaining territory (though that was certainly a concern in foreign

¹⁷⁰ David P. Chandler, *A History of Cambodia*, 2nd ed. (Boulder: Westview, 1992), 104

¹⁷¹ Philip Short, *Pol Pot: Anatomy of a Nightmare* (New York: Henry Holt, 2004), 77

¹⁷² Short, 282-283

¹⁷³ Chandler., 16

relations with Vietnam) as they did in insuring loyalty in the population under its control, usually through patronage but also by force; it is no coincidence that throughout the 20th Century, from Prince Sihanouk to Lon Nol to Pol Pot to Hun Sen, Cambodian political leaders have ruled the country on a personal basis, taking any dissent and opposition as tantamount to disloyalty and treason.¹⁷⁴

As far as historical records show, Cambodians converted *en masse* to Theravada Buddhism sometime in the 13th century, due to the growing influence of the Thai kingdom to the west, and they gradually abandoned the “Angkorean” civilization that had marked the highpoint of Cambodian power in Southeast Asia. Prior to this conversion, the Cambodian people held to a belief in Hinduism and the worship of local spirits, and elements of these beliefs continued to exist alongside Theravada Buddhism, particularly in its national literature and in its kingship rituals. “Until recent times, the Khmer language employed the same word for race and religion: to be Khmer was to be Buddhist.”¹⁷⁵ The Buddhist *sangha* (the monastic community) retained a largely independent status within Cambodian society and history, and it was responsible for maintaining basic educational institutions, encouraging literacy, and providing a way of life outside the relatively limited institutions of the family villages.¹⁷⁶

The territory that made up Cambodia was a protectorate of the French colonial empire of Indochina. Under the French protectorate, which lasted from 1863 to 1953, the Cambodian people were generally not encouraged to take part in the political process; it was only in the 1920s and 1930s that they began to take a larger part in the civil

¹⁷⁴ Chandler, 245

¹⁷⁵ Short, 327

¹⁷⁶ Chandler, 106

bureaucracy introduced by the French.¹⁷⁷ Cambodia gained its formal independence from France in November 1953, shortly before the end of the conflict between France and Vietnam in 1954; the country was accepted as a member of the United Nations in 1955. Under the leadership of Prince Norodom Sihanouk, Cambodia sought closer alliances with North Vietnam and China following France's departure from Southeast Asia, while it increased domestic repression of opposition political parties and political dissent from both left and right, as well as Vietnamese and Chinese minorities. Several attempts were made on Sihanouk's life in the late 1950s, including one orchestrated by the leaders of both Thailand and South Vietnam; this was carried out because Sihanouk was allowing the Communist Viet Minh to operate openly on Cambodian soil. These events led to Cambodia breaking off diplomatic ties with those two countries, as well as with their ally the United States, in the early 1960s.

Throughout the 1950s, the Khmer Issarak, originally anti-French guerrillas after World War II, remained active in the northwestern areas of the country, which had been under Thai administration until the area was formally declared to be Cambodian territory. In the eastern and southern areas of the country, which were largely rural or forested, communist guerrillas, both indigenous and the Viet Minh, controlled large areas after independence was declared, perhaps as much as half of the country.¹⁷⁸ While after the 1954 Geneva Conference, many of these guerrillas withdrew into North Vietnam, the boundaries between North Vietnam, Cambodia, and Laos remained fluid as North Vietnam began supplying the communist insurgency in South Vietnam along the Ho Chi Minh Trail.

¹⁷⁷ Chandler, 162

¹⁷⁸ Chandler, 180-181

The brutal repression of domestic political opposition drove some people out of the cities and into the countryside, where the reach of the Sihanouk's government was not as strong. It was in the countryside that the Communist group led by Saloth Sar, better known as Pol Pot, and Ieng Sary began forging closer ties with the Communist Party leaders of North Vietnam. It was also where they began to create a unique identity for their organization, the Khmer Rouge, not subordinate to the goals of the Chinese Communist Party, which dominated the Communist movements in the region (except for that of North Vietnam). This new identity would culminate in the doctrine of "independence-mastery," the right of Cambodian Communists to determine their own strategy for both political and armed struggles.¹⁷⁹ It would also lead to a political program that sought the cultural, social, and economic leveling of the Cambodian population, refashioning "the whole of Cambodian society in the image of [an] authentic, autochthonous peasantry, unsullied by the outside world."¹⁸⁰

The growing tension within Cambodian society in the late 1960s would eventually lead to outright civil war. Pressures from the Cultural Revolution in China caused strained relations with Sihanouk. Sihanouk then began to seek rapprochement with the United States, which by that time was fully involved in the war in Vietnam. Guerrilla attacks by the Khmer Rouge increased in the southern and eastern areas of the country, leading Sihanouk to rely more on the security forces of General Lon Nol to maintain order throughout the country. In March 1969, U.S. President Richard Nixon began a series of secret bombing raids against Viet Cong sanctuaries in Cambodia, which drove many people back into the cities and which emboldened the forces of the Viet

¹⁷⁹ Philip Short, 213

¹⁸⁰ *ibid.*, 232

Cong and North Vietnamese Army to begin attacking the Cambodian government. In early 1970, Lon Nol and the Cambodian National Assembly deposed Sihanouk, and the monarchy was abolished. “Each side was deliberately cutting loose from its traditional points of reference: the monarchy, in Lon Nol’s case; the legacy of Indochinese communism in the case of the Khmer Rouges [sic]. The normal restraints on thought and behavior were eroding. Cambodia was moving into unknown territory.”¹⁸¹

The early 1970s marked a turning point for popular support for the Khmer Rouge. The United States continued bombing the country, trying to root out the Viet Cong presence, and it continued to support the Lon Nol government.¹⁸² The pragmatic alliance between North Vietnam and the Khmer Rouge began to become strained as both the Khmer Rouge began to control more Cambodian territory, and the North Vietnamese began to move more of their troops into South Vietnam. It was at this time that Cambodians began to get a taste of the wholesale changes that were going to become national policy in the next several years. Village life in the countryside was being uprooted, and families were made go live in communes. Town-dwellers were encouraged to return to the country, in order to “re-forge” themselves and to reconnect with their traditional Khmer roots.¹⁸³ For communications, couriers were used instead of radios, and there was a growing distrust of Cambodians who were educated, those Cambodian Communists returning from North Vietnam, anyone of Chinese descent, the native Muslim Cham people, and generally anyone who dissented from the revolutionary Khmer Rouge doctrine.¹⁸⁴ The language of Theravada Buddhism came to unconsciously

¹⁸¹ *ibid.*, 210

¹⁸² Short, 245

¹⁸³ *ibid.*, 246-7, 257

¹⁸⁴ *ibid.*, 250, 254

permeate the ideology of Khmer communism, specifically with regard to the ideas of consciousness and class. “To ‘proletarianise’ the peasantry, all that was needed, in this Buddhist-inspired scheme of things, was ‘proletarian consciousness’. Class, which to Marxists everywhere else . . . was determined by a person’s economic activity, was for Cambodian communists a mental attribute.”¹⁸⁵ For rank-and-file members of the Khmer Rouge, there were the “Twelve Commandments,” which mirrored the Buddhist monks’ vows of abstinence, and after 1975, Cambodian people in the communes were encouraged to practice ‘renunciation’.¹⁸⁶

In April 1975, the Khmer Rouge took control of the capitol city, Phnom Penh, and they immediately began a general evacuation of the city; it is estimated that some 20,000 people died during the evacuation alone.¹⁸⁷ The country’s borders were closed, foreign ambassadors and press agencies were expelled, newspapers and TV stations were shut down, radios confiscated, mail and telephone use suppressed, and the speaking of languages other than Khmer were punished.¹⁸⁸ The population was divided into two groups: the new people (*neak thmey*), made up of urban evacuees and peasants who have been living under areas controlled by the Lon Nol government, amounting to about 30 percent of the population; and the base people (*neak moulanh*), the peasant majority living in areas under insurgent control.¹⁸⁹ When people were finally settled into the rural communes, they were all required to write a short autobiography, in order to disclose their family ties and class backgrounds and how they spent their lives during the Lon Nol

¹⁸⁵ *ibid.*, 149

¹⁸⁶ Short, 234, 324

¹⁸⁷ Ben Kiernan, *The Pol Pot Regime: Race, Power, and Genocide in Cambodia under the Khmer Rouge 1975-1979* (New Haven: Yale University Press, 1996), 46; 48-49

¹⁸⁸ Kiernan, 9

¹⁸⁹ Kiernan, 164

years. Technicians and skilled workers were sometimes allowed to return to the towns, in order to reopen production in factories, while civil servants, doctors, engineers, lawyers, school teachers, university students, and former military personnel were all sent for “re-education”, meaning either execution or intense manual labor and further interrogation.¹⁹⁰ In the winter of 1975, the Khmer Rouge opened a high security prison at Tuol Sleng, known infamously today as S-21; its purpose was to “provide information as to furnish ‘proof’ of treason which would then justify purges that the leadership had already decided to carry out.”¹⁹¹ It is estimated that some 15,000 to 20,000 people died at S-21.¹⁹²

To further add to the population’s growing misery, illness, lack of productivity, and failure to achieve agricultural production goals were all attributed to opposition to the regime or to a lack of revolutionary consciousness.¹⁹³ During the reign of the Khmer Rouge, between one-third and one-half of the population was sick, hungry, and not able to work; the rest did as little work as they could get by with. The rural communes, out of fear of the political leadership, began falsifying records of their production in order to avoid punishments. In turn, the state assessed levies on the rice to supply its armed forces, administration, and strategic reserves, which left around forty percent of the population with starvation rations.¹⁹⁴ “Democratic Kampuchea was a prison camp state, and the eight million prisoners served most of their time in solitary confinement. And 1.5 million of the inmates were worked, starved, and beaten to death.”¹⁹⁵ Paranoia amongst

¹⁹⁰ Short, 280-282; Kiernan, 45; 60-61

¹⁹¹ Short., 359

¹⁹² *ibid.*, 364

¹⁹³ *ibid.*, 320

¹⁹⁴ *ibid.*, 332-333

¹⁹⁵ Kiernan, 9

the political leadership was rife, leading to a number of purges in the following years, with as many as 100,000 to 250,000 dying in 1978 alone, accused of collaborating with the Vietnamese government.¹⁹⁶

In the spring of 1977, conflict with the now unified Vietnam increased, and Vietnam carried out a full-scale invasion of the country in December of that year. The conflict continued until January 1979, when the Khmer Rouge government collapsed, and its leadership fled once again into the countryside. The Khmer Rouge had been in power exactly three years, eight months, and twenty days,¹⁹⁷ and this had resulted in the deaths of between one and a half million to three million people within the country's borders, most of whom were Cambodia's own population.¹⁹⁸

Argentina

Argentina declared its independence from Spain in 1816, part of a larger wave of Latin American independence movements in the early 19th century. Its bid for independence was influenced by both the American and French Revolutions; its early constitution combined both American and European elements in the political life of the unified country. The Catholic Church was also an important part of national political life, and the church-influenced political philosophy of corporatism later became important in public life, as it did throughout Latin America. "The very idea of democracy, of the political representation of social interests, of negotiation first in the context of the party

¹⁹⁶ Short, 386

¹⁹⁷ *ibid.*, 401

¹⁹⁸ U. S. Department of State, "Background Note: Cambodia," <http://www.state.gov/r/pa/ei/bgn/2732.htm>, accessed 4/8/08; see also, Bruce Sharp, "Counting Hell: The Death Toll of the Khmer Rouge in Cambodia," <http://www.mekong.net/cambodia/deaths.htm>, accessed 4/29/08

and then in shared political forums, had little prestige in a society long accustomed to a situation in which each of its parts negotiated separately with the state. Politics appeared a fiction that served to mask the real negotiations between the true factors of power.”¹⁹⁹

By the early Twentieth Century, patterns of social and economic development in Argentina were similar to those of other European settler colonies, except for land ownership, which was dominated by oligarchs, consisting of a few powerful families or estates (*estancias*), many of whom would become involved in the mercantile business, finance, and secondary industries;²⁰⁰ this was a legacy of Spanish colonial practice. Following the growth of the urban population, further democratic reforms were introduced in the 1910s, but due to labor uprisings in the 1919 and in the early 1920s, the propertied classes began to distrust the government’s ability to put down such rebellions as well as the value of democratic government itself. The first military coup took place in 1930; the Argentine Supreme Court ruled that the military could in fact oust a legally elected government.²⁰¹ A succession of military governments ruled until the late 1940s. This tendency to intervene reflected the lack of civilian control over the military, as well as the corporatist tendency within Argentine society for interest groups to act without regard for other groups.

Throughout the 1940s, the political power of Colonel Juan Peron grew as he crafted a political alliance between the military and labor organizations, eschewing the traditional partnership of the military and the economic elites. When elections were finally held in Argentina in 1946, Peron was elected president, and members of his

¹⁹⁹ Luis Roberto Romero, *A History of Argentina in the Twentieth Century*, trans. James P. Brennan (University Park, Penn.: Pennsylvania State University Press, 2002), 203

²⁰⁰ Patricia M. Marchak, with William Marchak, *God’s Assassins: State Terrorism in Argentina in the 1970s* (Montreal: McGill-Queen’s University Press, 1999), 43-44

²⁰¹ *ibid.*, 50-51

Justicialist party won seats in Congress and in the provinces. Peron sought to reorder the social and political life of the country through a number of reforms. His political style was at once authoritarian, factional, and anti-Communist.²⁰² He managed to forge a broad coalition of political actors across Argentine society - labor and business, youth, women, and left-wing movements - all under the influence of his and his wife Evita's charismatic personalities. He created a much more centralized government and an enormous public bureaucracy, and he staffed public offices with his followers, including the justice system. He nationalized all railroads and foreign-owned business, strengthened the power of labor unions, and brought about a massive redistribution of income towards the working classes. At the same time, all public media were brought under strict control, civil liberties were curtailed, and political opposition was either forced into exile or imprisoned. Union membership grew, but members lost control of their leadership, as they were dependent on Peron and his government to intervene for them. At first on good terms with both the Catholic Church and the military, both institutions eventually turned hostile toward him as he subordinated their authority within Argentinean society to his own. Peron was reelected to office in 1951, after having created a new constitution that would allow him to serve consecutive terms. Following a failed coup attempt, he declared a state of emergency which remained in force until he was finally overthrown by another coup in 1955 and forced into exile; the shadow of his influence lingered over Argentinean politics for almost two decades.

The military remained hostile toward Peron's political movement after his ouster. Pedro Aramburu was elected president from 1955 to 1958; Peronist generals attempted an unsuccessful coup against his government in 1956. Also in 1956, special elections were

²⁰² Romero, 210

held to reform the constitution, and 25% of the ballots were turned in blank as a protest against the government's anti-Peronist policies. Arthur Frondizi was elected president from 1958 to 1962; he received support from Peron in exile, but during the last year of his presidency, the military intervened when Peronist candidates began winning majorities in local elections. Arturo Illia was president from 1963 to 1966; during this time, both communists and Peronists were banned from seeking office, and the use of Peron's name was prohibited in public life. In 1966, General Juan Carlos Onganía was named *de facto* president by the military, and this marked the beginning of a series of military-appointed presidents.

Throughout the late 1960s and the 1970s, the Argentinean public was struggling with a great deal of social upheaval, much of it in reaction to the decades of military interference with elected governments. A number of left-wing groups, both communist groups like the ERP, and Peronist organizations such as the *Montoneros*, began to adopt guerrilla and terror tactics in order to carry on a political struggle against the predominant power of the military and to win further public support for their causes.

The military coup authorized elections again in 1973 but did not allow Peron himself to seek office. Hector Campora, a moderate, left-wing Peronist, was elected as president. Peron's political followers also gained majorities in Congress. At the same time, the 1973 oil crisis affected the country, generating a great deal of social conflict, including acts of terror from both right and left. Peron returned to Argentina in June of that year; his arrival at Ezeiza airport was marked by the murders of a number of his supporters in the crowd by a right-wing death squad. Following this incident, President Campora and his cabinet resigned, and new elections were held the following September,

leading to the election of Peron and his wife Isabel. The cycle of violence was continued by extremist groups.

After his election, Peron sided with the right-wing of his own political movement, the trade-unionist bureaucracy, and the Radical Civic Union party. He sought to exclude the more radical left-wing *Montoneros* from his *Justicialist* Party. The *Montoneros* followed suit with other radical groups, continuing to use terror tactics against the government in order to push it into repressive actions, seeking to turn popular support against the government. The prospect of the return of Peron had led the military to resist attempts to restore democracy throughout the 1960s, and now growing social turmoil had led them to make way for his return in 1973; Marchak argues that “the underlying reality included military control or a strong military presence in the state from 1930 to 1973,” yet it was a presence that was not united in its own interest.²⁰³ These divisions continued to grow even after Peron’s return. The military had taken upon itself the mission of resisting both Peronism and burgeoning militant communism and became fragmented itself in the pursuit of those goals. These conditions created a “siege mentality” among members of the military. As a social class, the military leadership had always been generally isolated from the mainstream of Argentinean society, and they often styled themselves as the protectors of the country. They came to believe that “politics had exhausted its possibilities without overcoming the destructive effects of terrorism,” and that what had to be done was to be done out of necessity for continued existence of Argentina.²⁰⁴ Thus, through a number of coups and weak civilian governments in the later 20th century, the ideology developed within the military that “the enemy within” was

²⁰³ Marchak, 65

²⁰⁴ Horacio Verbitsky, *Confessions of an Argentine Dirty Warrior*, rev. ed. (New York: Free Press, 2005), 98

whoever had the greatest chance of winning an election fairly;²⁰⁵ in other words, the military high commands had lost faith in the ability of democratic citizenships to lead themselves, and more importantly, to correctly recognize threats to their own well-being as a people.

Peron died of a heart attack in July 1974, and he was succeeded in the presidency by his wife. Throughout 1975, a number of secret directives were issued by Isabel Peron and by the military, in which the army was ordered to take whatever measures were necessary to quash the activities of the People's Revolutionary Army (ERP, *Ejercito Revolucionario del Pueblo*), a radical left-wing guerrilla group which had seized control of the northern state of Tucuman, as well as other guerrilla groups. These directives also gave extensive powers to the military over local police forces and jails and prisons, and they divided the entire country up into military zones and districts. The Argentinean economy continued to decline, and intra-party conflict and further acts of terrorism throughout the country led to her being removed by a military coup in March 1976.

A ruling *junta* was established, called the National Reorganization Process (infamously known as the Process), led by Generals Jorge Rafael Videla, Roberto Viola, and Leopoldo Galtieri. Argentina always had a tradition of a strong executive, but under the *junta*, the actual authority of the president became weak and subject to military control. Presidential powers were ill-defined and subject to a changing balance of alliances and confrontations within the dual chain of command between what would become the clandestine terror state and the visible state. Romero argued that this was “a veritable revolution against the state, affecting the possibility of exercising even those functions of regulation and control that according to liberal concepts were its rightful

²⁰⁵ *ibid.*, 169-170

preserve.”²⁰⁶ The *junta* sought to jumpstart the economy through pro-market reforms, deregulation, and by attracting foreign investment. It also began applying harsh measures against all political opponents and anyone suspected of opposing the government in what they called an “ideological war,” or “The Dirty War.”

Under the *junta*, political repression was systematized through the use of forced “disappearances,” which made it impossible to bring criminal charges against anyone, and a nation-wide system of tracking down subversives was organized. After being abducted, suspects would be interrogated and tortured. Many were executed by being drugged and thrown out of military aircraft over rivers or the Atlantic Ocean. This went hand-in-hand with the efforts of General Auguste Pinochet in neighboring Chile, collectively known as Operation Condor. The disappearances occurred mainly from 1976 to 1978, when both the ERP and the *Montoneros* were finally decimated, after which the number of disappearances drastically reduced. More than half of the regime’s kidnappings and murders took place in 1977.²⁰⁷ In all, as many as 30,000 people died during this time.²⁰⁸

Greater efforts toward the centralization of political power in Argentina had already taken place under the Peron regime after World War Two. Later, as noted above, during the mid-1970s the military was given the power to divide up the country into military districts and to centralize their control over local and regional police forces and detention facilities in order to deal with the problem of terrorism. This was a very easy way for the central government to use already existing institutions for the purposes of totalitarian control of the entire country. Under the *junta*, all of Argentina’s political

²⁰⁶ Romero, 233-234

²⁰⁷ Verbitsky, 60

²⁰⁸ Romero, 218; CONADEP was able to document 9000 cases.

institutions disappeared, all political activity was prohibited, and only the state apparatus remained. The majority of people reacted by rationalizing the political repression and internalizing it, informing on neighbors and censoring themselves.²⁰⁹ The state terrorism that took place “was in reality an integral operation of terror, carefully planned by the leadership of the three service branches, rehearsed first in Tucuman – where the army officially intervened in 1975 – and then executed in a systematic fashion throughout the country.”²¹⁰

Argentine society had tended to operate in an authoritarian fashion and had failed to develop and sustain the rule of law and the legal resolution of conflict, largely because any viable form political pluralism failed to emerge. “A volatile mixture of competing interest groups struggled within a society that had already dismantled if not fully destroyed its judicial system, its free press, the possibility of independent academic inquiry in its universities, its political parties, and independent or disengaged police action. All activities were therefore political in the rawest sense.”²¹¹

Another economic crisis began in Argentina in 1980 with bankruptcies and runs on the country’s banks, and massive capital flight followed. To counter this, the government then began devaluing the *peso* and nationalizing the private debt of companies, causing the national debt to grow into the tens of billions of dollars over the course of a few years; the same thing was occurring throughout Latin America. In 1982, the Argentine military invaded the Falkland Islands but were soundly defeated by the British military within a few months. Following this, the *junta* began to fall apart, and the military government began covering up its involvement in the worst parts of the

²⁰⁹ *ibid.*, 219-220

²¹⁰ *ibid.*, 216

²¹¹ Marchak, 4-5

repression by giving themselves legal amnesty before stepping down.²¹² At no point during the period of the *junta* did the military outright deny the murders, tortures, and kidnappings; rather, they refused to explain themselves and refused to answer for their deeds, using the rhetoric of “the victors cannot be tried after the victory.”²¹³

Yugoslavia

In making sense of the crimes against humanity committed in the former Yugoslavia in the 1990s, many writers and scholars have emphasized the role of ethnic identity, but I think a better place to start would be with the political culture of single-party Communist states. As with all of the Eastern European countries that fell under Soviet influence after World War II, Yugoslavia adopted the Stalinist model of political leadership. All competing parties were banned from the political process, and vocal dissent from the Communist Party line was punished in a variety of ways, ranging from the loss of jobs and opportunities for advancement to torture, imprisonment, and murder. To keep a tight control over dissent, an extensive network of secret police and informants and strict control over the public media were created to keep tabs on and shape public opinion. Central control over the country’s economy was also directed by the party’s political leadership.

What made Yugoslavia unique among European Communist states was the consequences of its break with the Soviet Union in 1948. This allowed Yugoslavia to “go its own way,” opening up to Western nations both culturally and economically (and

²¹² Romero, 248

²¹³ Verbitsky, 70

eventually becoming dependent on foreign money markets). The concept of “socialist self-management” grew out of Yugoslavia’s attempts to create a planned economy apart from the rest of the Communist world. Finally, Yugoslavia was at the forefront of the Non-Aligned Movement, providing an example for developing nations around the world which sought to steer clear of Cold War alliances.²¹⁴

Marshall Josip Broz Tito sought to organize the post-war Yugoslavia around the concept of “brotherhood and unity” (*bratsvo i jedinstvo*). Throughout modern history, the southeastern European region had been the object of numerous power struggles between major powers and well as various attempts to assert provincial and ethnic independence, often at the expense of neighboring peoples. The idea of a unified Yugoslavia had first appeared in the 17th and 18th centuries; with Western encouragement, an independent Kingdom of Yugoslavia was declared following World War I. Following Axis occupation, this idea was reasserted in the form of the Socialist Federal Republic of Yugoslavia. Marshall Tito wanted to focus on developing the country’s strength from its diverse population, which was organized into six federal republics (Serbia, Croatia, Bosnia-Herzegovina, Montenegro, Macedonia, and Slovenia) and two autonomous regions within Serbia, Kosovo and Vojvodina; each republic and autonomous region roughly corresponded to the majority ethnic population of the territory, although there was a mix ethnic populations within each region that continued to grow in the following decades. Despite this recognition of ethnic, religious, and linguistic diversity, it was understood that these federal units were largely administrative, as Tito and the Communist Party leadership were not interested in tolerating “negative

²¹⁴ Tim Judah, *The Serbs: History, Myth, and the Destruction of Yugoslavia* (New Haven: Yale University Press, 2000), 141f

local patriotism.”²¹⁵ The republics and autonomous regions were unified under the authority of a single government, single party rule, and in an authoritarian fashion.²¹⁶ Under this system, “[while] it sought to accommodate the national interests of the most of Yugoslavia’s peoples in a federal system, it also assumed an unchanging unity of interests,”²¹⁷ which was turn out to not be the case in subsequent years.

Much in the same spirit as other Communist parties, Tito’s Yugoslavian model sought to move the country forward socially, politically, and economically. In the interests of this end, he sought to forge a new national identity for the diverse peoples within Yugoslavia’s borders, but this came at a price.

Tito’s policy was to draw a line under the past. Everyone who had died in the Second World War had either been a collaborator or a Partisan or a victim of the Axis powers and their satellites The effect of this was not to make people forget, as was the intention, but to leave the wounds unhealed As Communism crumbled in the late 1980s, Serbs, Croats, and Slovenes began to dig up their dead and rebury them the atmosphere of the times was such that these events inevitably fed the growing nationalist hysteria and was used by nationalist politicians to further their aims.²¹⁸

Stjepan Mestrovic has argued that after the fall of Communism in Eastern Europe beginning in 1989, already existing national, ethnic, and religious identities, which had supposedly been “supplanted” by a secular ideology, were there to step in and take the place of the authority of the Party and the state.²¹⁹ These alternative identities had neither been supplanted nor eradicated by communism. Besides this, efforts to overcome ethnic differences within the country, many recognized within the country that Serbs dominated the political life of the country after World War II. This was largely an accident of

²¹⁵ *ibid.*, 140

²¹⁶ *ibid.*, 138

²¹⁷ *ibid.*, 136

²¹⁸ *ibid.*, 132-133

²¹⁹ *The Balkanization of the West: The Confluence of Postmodernism and Postcommunism* (London: Routledge, 1994), 144-148

history, due to the large number of Serbs among Partisan fighters during the war, who were rewarded for their service with political positions in government and in the party.²²⁰

Drawing from the experience of the Second World War, Tito and the elder Yugoslavian leadership also realized that any future military conflict would likely involve occupation of the country, and the Yugoslavian military would not have the resources to carry out full-scale defensive operations of the country's borders. Instead, the military's strategy was designed around waging guerrilla war against potential occupiers. Military supplies were placed in each republic, and the command of the military was decentralized along regional lines. While there existed a unified Yugoslavian National Army (the JNA), for all practical purposes there existed six potentially separate armies within the former Yugoslavia.²²¹

In the 1960s, there began a series of debates at the national level over political and economic issues that eventually reopened ethnic fault lines. There were upsurges of nationalist sentiments, beginning in the universities in Belgrade in 1968, in Pristina in 1969, and during the "Croatian Spring" of 1970-71, all of which were inspired by student movements in other parts of the world. There was also a call for decentralization of political authority and economic planning within the country, culminating in the revised 1974 constitution, which, among other things, created a rotating presidency of the country which would not allow a single republic dominate the rest of the country and which gave considerably more autonomy to the regions of Kosovo and Vojvodina. Finally, Yugoslavia's policy of non-alignment allowed Muslims in Bosnia-Herzegovina

²²⁰ Judah, 139

²²¹ Tone Bringa, "Averted Gaze: Genocide in Bosnia-Herzegovina," in *Annihilating Difference: The Anthropology of Genocide*, ed. Alexander Laban Hinton, 208

to make contacts with fellow Muslims outside of the country.²²² Even with these widespread expressions of ethnic identity and the moves taken toward decentralization, efforts toward ethnic separatism were still discouraged and often punished.

A number of Serbians responded to these changes with dismay and anger, and they began to perceive discrimination directed at them from the federal government as well as from other ethnic groups. Throughout the early 1980s, stories circulated among the Serb population that Serbs were being subject to discrimination, abuse, and even murder, although later, most of these stories were shown to be without foundation.²²³ There were also a number of outbursts of violence between Serbs and Yugoslav state authorities as well as increased emigration of Serbs, particularly from the province of Kosovo; this led to a general government crackdown on all nationalist protests.

The death of Tito in 1980, political deadlock created by the 1974 constitutional arrangements, perceived discrimination against Serbs, and the spiraling national debt in the 1980s²²⁴ all converged to create an extremely volatile situation throughout the country. Some sense of this volatility received a public expression in 1986 with the leaking of the incomplete *Memorandum* of the Serbian Academy of Sciences and Arts (SANU) through the news media. The previous year Ivan Stambolic, head of the Serbian Communist Party, had requested input from SANU in order to aid in the reform process. The first part of the document was an economic analysis of the condition of Yugoslavia in the mid-1980s, tracing the origins of the financial and economic crisis to poor decision-making and planning in the 1960s and to the failure of the new federalist

²²² Judah, 154-155

²²³ Misha Glenny, *The Balkans: National, War, and the Great Powers: 1804-1999*, (New York: Penguin, 2001), 623

²²⁴ *ibid*, 625

arrangements created by the 1974 constitution. The latter section of the unfinished document presented a case for the strengthening of the Serbian nation. It referred to the emigration of Serbs from Kosovo as a result of “neofascist aggression” and as “genocide,”²²⁵ and it blamed this on the Communist Party’s tradition of “blaming the Serbs” for Yugoslavia’s problems.²²⁶ The document ended by asserting that “the Serbian people must be allowed to find themselves again and become an historical personality in their own right.”²²⁷ It proposed two steps to do this: regaining jurisdiction over the provinces of Kosovo and Vojvodina; and creating a specifically Serbian national interest.²²⁸

The following two years were decisive for Yugoslavia. There were mass protests in Serbia regarding the status of Kosovo. A Serbian Communist Party official, Slobodan Milosevic, took advantage of these protests to engineer his own rise to power and to exacerbate already existing Serbian nationalism. He was able to capitalize on an incident in which Kosovo police violently attacked a crowd of ethnic Serbian protesters and which led to the resignation of Serbian President Ivan Stambolic in April 1987; Milosevic assumed the Presidency the following year. Once he did so, he began what came to be known as the “anti-bureaucratic revolution,” in which staged protests against the parliaments of Kosovo, Vojvodina, and Montenegro led to the replacement of their presidencies with allies of Milosevic. This increasing popular rise of Serbian nationalism (encouraged, as noted above, by intellectuals and politicians) greatly contributed to the

²²⁵ Serbian Academy of Arts and Sciences, “Memorandum 1986 (the Greater Serbian Ideology),” http://www.trepca.net/english/2006/serbian_memorandum_1986/serbia_memorandum_1986.html, accessed 12/31/08

²²⁶ *ibid.*

²²⁷ *ibid.*

²²⁸ *ibid.*,

growing self-consciousness of other ethnic groups within Yugoslavia; the assertion of Serbian identity forced other groups to define themselves in relation to Serbian nationalism.

By January 1989, Serbia under Milosevic controlled four of the eight votes in Yugoslavia's Federal Presidency, giving it effective control over the Yugoslav Republic. At this point, the Kosovo issue ceased to be of interest to Milosevic, and he began to focus on gaining control of Yugoslavia's political identity.²²⁹ In March 1989, amendments to the Yugoslavian constitution reduced the autonomy of Kosovo and Vojvodina; Kosovo Albanians responded by creating a separatist movement. And in June of that same year, Milosevic gave a speech at Gazimestan in Kosovo, commemorating the 600th anniversary of the Battle of Kosovo, in which he emphasized Serbia's central role in saving Europe from the Ottoman Empire.

Beginning in 1990, the former Yugoslavia began to break apart along ethnic lines. Following a Communist Party Congress in January, delegates from Slovenia and Croatia protested against Serbia's dominance of the proceedings and left. Inspired by the fall of the Berlin Wall in 1989 and the overthrow of Communist Party dominance in other parts of Eastern Europe, Croatia, Slovenia, and Bosnia each held their first free elections; Serbia followed suit in December, with a majority victory for Milosevic and his Socialist Party. One problem that stood in the way of national independence for each of these republics was control over the Yugoslav Federal Army (JNA). In January 1991, the military threatened coups in Croatia and Slovenia unless local police were disarmed,

²²⁹ Glenny, 628

while the military leadership became alarmed over nationalist agitation by state-run television and by the nationalist leaders of the republics.²³⁰

Following this, the situation throughout the country became more violent. Clashes between Croat security forces and ethnic Serbian protesters in Croatia became frequent after the Serb Republic of Krajina declared its independence from Croatia in April 1991. Both Slovenia and Croatia declared their independence from Yugoslavia in June 1991, and conflict immediately broke out between these republics and the central government. The international community's response was mixed; Germany recognized the independence of Slovenia and Croatia, while France and Britain were more reluctant to do; the United States treated the matter as an exclusively European problem. The United Nations sought to broker a temporary settlement among the parties to the conflicts in order that peacekeepers could be deployed.²³¹ The conflict between Slovenia and Yugoslavia was over in ten days, because Slovenia had taken steps to gain control over the military command structure within its own borders over the preceding year. Full-scale war broke out between Yugoslavia and Croatia in August 1991. During the siege of Vukovar, which lasted from August until November, the world began to see massive internal displacements of the population, including deliberate "ethnic cleansing" of certain regions. Numerous massacres of civilians also occurred during this period of time throughout Croatian territory, committed by both the Yugoslavian and Croatian military forces.

The idea of "one people, one nation" was taken to its extreme in the practice of the ethnic cleansing of these regions; individuals not belonging to the ethnic group laying

²³⁰ Glenny, 629-630

²³¹ *ibid.*, 637-38

claim to the territory were forcibly excluded from the area, or they were sometimes killed. This happened in the Serbian attack on Croatia, and would occur later in the Croatian attack on Bosnia, in the Serbian separatist attacks within Bosnia, and in the Serbian attacks against Kosovo. Here, political sovereignty and ethnic identity were made inseparable. After 1990, the Serbian political leadership began identifying the interests of Yugoslavia with the idea of a “Greater Serbia,” which in turn justified violence against the “separatist tendencies” of Slovenia, Croatia, Bosnia, and later Kosovo; there was no recognition of the legitimacy of right to secede, nor was there any sense that the future of the region was conceivable without the Serbian leadership of a unified Yugoslavia. The desire for Slovenia, Croatia, and Bosnia to break away from Yugoslavia was seen as a threat to Serbian dominance. A similar course of events took place in Croatia when the nationalist leadership of Franjo Tudjman began to practice ethnic cleansing of the border areas between Croatia and Serbia and to lend support to Croatian separatists in Bosnia. Even in multi-ethnic Bosnia, the same tactics were carried out later in the conflict against both Croats and Serbs. Later in the 1990s, ethnic cleansing was deliberately undertaken during the conflict in Kosovo by both the KLA against Kosovar Serbs and by the Serbian military against Kosovar Albanians.

Many of these atrocities during the Yugoslav wars were committed by paramilitary units, whose members were drawn from Serbia’s criminal underworld.²³² In many formerly communist nations, there existed an extensive underground economy that provided access to otherwise unavailable Western goods, and this economy became visible after the fall of communist regimes in the rise of criminal gangs and organized

²³² Nicholas Mills and Kira Brunner, *The New Killing Fields: Massacre and the Politics of Intervention*, (New York: Basic Books, 2002), 72

crime in the absence of authorities. Figures within organized crime had access to resources from outside of the country, they had connections within the country, and they had experience with violence. In a few instances, they created their own militias within certain regions.

At this time, number of other independence movements grew within the borders of Yugoslavia. Macedonia and Kosovo held referendums for independence in September of 1991, and the republic of Bosnia-Herzegovina declared its independence in October. Within Bosnia, ethnic Croats and Serbians declared themselves independent from the Bosnia government.

By December 1991, the United Nations was able to deploy a protection force inside of Croatia, and in January 1992, a successful ceasefire was put into place. The forces of the Yugoslav Federal Army withdrew, although fighting continued on smaller scale between these two groups throughout 1992 and 1993. The European Community finally gave recognition to both Slovenia and Croatia.

Just as the conflict between Croatia and Yugoslavia was winding down, problems began to rise between Yugoslavia and Bosnia-Herzegovina, which declared its independence in April 1992. War broke out immediately, and ethnic cleansing began again throughout the territory, particularly in the Croatian Republic of Herzeg-Bosnia and in the Serb-dominated Republic of Srpska. The United Nations extended its Protection Force Mandate to Bosnia shortly after this, in order to protect the airport in the city of Sarajevo. The following year, a number of peace plans were put forward, including the Vance-Owens plan and the Owen-Stoltenberg plan, both of which sought to divide Bosnia into ethnic regions; both were rejected by the Bosnian government. The United

Nations Security Council passed resolution 827, which created an international tribunal to try war crimes and crimes against humanity committed in the conflict.²³³ A successful ceasefire was finally declared in February 1994 between Bosnia and Croatia, and NATO establishes a no-fly zone over Bosnian territory. In March, the Washington Agreement was signed, ending the conflict between Bosnia-Herzegovina and Croatia; the Serbians in Krajina agreed to the ceasefire as well, and American and German negotiators pressured Bosnia and Croatia to form a confederation, but the latter was rejected.²³⁴

Later in the year, the forces of Serbian Krajina launched another offensive within Bosnia, renewing the conflict. The Croatian military intervened a number of times into Bosnia, attempting to encircle the Republic of Krajina. The Contact Group, consisting of the United States, Russia, Britain, and Germany, put forward another peace plan in October 1994, which sought to divide Bosnia-Herzegovina into two entities, the Federation and the Republika Srpska. In July 1995, a massacre at Srebrenica took place, carried out by Bosnian Serb forces under commander Ratko Mladic; over 8000 Bosnian Muslims were killed. In August, Croatian forces take over most of the Krajina region, leading to the ethnic cleansing of 200,000 Croat Serbs. That same month, NATO began a bombing campaign in Bosnia against the Bosnian Serb forces. Finally, in November, the conflict came to end with the signing of the Dayton Agreement, which divided the country along ethnic lines and left an UN peace-keeping force in place.

It is important to be clear about how to characterize the history of the breakup of the former Yugoslavia, as either a large-scale civil war, in which a legitimate central government attempted to prevent breakaway republics from seceding, or as a situation in

²³³ United Nations Security Council, Resolution 827, S/RES/827 (1993), <http://www.un.org/Docs/scres/1993/scres93.htm>; accessed June 4, 2008

²³⁴ Glenny, 647

which these republics had legitimate reasons for seceding. Recognition for independence was relatively slow in forthcoming to the republics, because many Western nations wanted to wait; independent statehood would have implied taking sides in the on-going conflict, something most Western governments were loathe to do at the time, preferring instead to treat the situation in Yugoslavia as a civil conflict that could be resolved peaceably. Mestrovic argued that this unwillingness to take sides was symptomatic of a fundamental flaw within modernity and Western Enlightenment, a refusal to recognize the importance of national and ethnic identity in the wake of the Cold War.²³⁵ While ethnic differences certainly do not imply an automatic claim to self-determination, Western nations at the time did not take seriously the danger implied in the claims of Serbian and Croatian nationalism and the role of the nationalist ideology in persuading people to carry out ethnic cleansing within Croatia, Bosnia-Herzegovina and Kosovo. By not taking seriously the democratic decisions of the Slovenian, Croatian, and Bosnian people to secede, Western nations inadvertently fueled the efforts of virulent Serbian nationalists. The country of Slovenia was the first to realize this situation and began to create a parallel command structure over its military forces, separate from the central command, in preparation for its declaration of independence. The other republics were not able to act with this haste; conflict was waged in Croatia between the JNA and the fledgling Croatian military (using JNA equipment). By the time conflict erupted in Bosnia-Herzegovina, the United Nations had already established an arms embargo to the Yugoslavia region, so it took a number of years before the Bosnian military was able to create forces able to stand on level ground with the Bosnian Serb Republika Srpska, which

²³⁵ see his *The Balkanization of the West*, op. cite.

had inherited the majority of military resources as well as received aid from the JNA (now under the *de facto* control of Serbia).

In 1996, a new phase of the conflict began. The Kosovo Liberation Army, which at the time was not an organized unit but operated only as small cells, began carrying out attacks on Serbian civilians and security personnel in Kosovo. Much of the KLA's funding and support came from Albanian Kosovars in exile, and its policy was to oppose the moderate government of Ibrahim Rugova in Kosovo. The following year, the fall of the Albanian government led to the looting of stockpiles of military weapons by criminal gangs, and many of these weapons wound up in the hands of the KLA, allowing them to step up their attacks in early 1998, especially in the Drenica Valley region in southern Kosovo.

In March 1998, the Yugoslav Army and the Serbian Interior Ministry began operations to control KLA activity along the border area between Kosovo and Albania. International concern in the region led to negotiations between Slobodan Milosevic and Russian President Boris Yeltsin, which led to a halt of Yugoslavian operations and the establishment of the Kosovo Diplomatic Observer Mission. However, the conflict continued as the KLA brought more territory under its control and moved further north toward the capital of Pristina. A number of atrocities were committed against Serbians in Kosovo by the KLA during this time. In October, the international community demanded an end to the fighting through the Kosovo Verification Agreement; the Yugoslav government was asked to end all offensives, while the KLA was asked to end its bid for Kosovar independence. To this end, NATO peace-keeping troops would be stationed

throughout Kosovo. A ceasefire began on October 25, and a group of observers from the OSCE nations moved into Kosovo.

The conflict started up again in December, when the KLA shot up a café in Pec, occupied strategic bunkers along the Pristina-Pec highway, and assassinated the mayor of Kosovo Polje. In January 1999, KVM observers gained access to the besieged town of Racak and discovered the bodies of 45 dead civilians; two days later, Serbian police entered the town and took the bodies away. This news received universal condemnation and set the stage for both the Rambouillet Conference and the announcement of NATO's readiness to launch air strikes against Serbian forces. The Rambouillet Conference ended on March 18, with a plan in which NATO would administer Kosovo as an autonomous region within Yugoslavia, with 30,000 troops on the ground, but the Serbians refused to comply with these conditions. From March 24 to June 11, NATO began its bombing campaign. During this period, ethnic cleansing continued with Kosovo; over 300,000 Kosovar Albanians fled to neighboring Albania and Macedonia. By April, 850,000 people were displaced in the region. In May, an indictment was read at the International Criminal Tribunal for the former Yugoslavia against Slobodan Milosevic regarding crimes against humanity committed in Kosovo. On June 12, Milosevic accepted the terms of Rambouillet Agreement, and the NATO peacekeeping force, along with a number of Russian peacekeepers, entered the region, and the conflict was ended.

Rwanda

The ethnic identities of Hutu and Tutsi are central in understanding the atrocities committed in Rwanda in 1994. Rwandan society was dominated by a feudal system called *igikini* until the late 1950s. Under this system, the Tutsi monarchy (the *mwami*) received service in exchange for use of land (under a contract known as *uburetwa*) and for cattle (*ubuhake*). Over time, this resulted in the creation of a social hierarchy within the region.

The nature of divisions between Hutu . . . and Tutsi has [sic] always been complex, especially since the Belgian colonial era. Before colonialism, 'Hutu' and 'Tutsi' signified little more than socioeconomic status, with Hutu the cultivators who worked in the service of the Tutsi pastoral aristocracy. Hutu and Tutsi spoke the same language, held many of the same religious beliefs, and practiced the same rituals. The categories were permeable, so that a Hutu who gained sufficient wealth, usually in the form of cattle, could become a Tutsi. The lines blurred further with widespread intermarriage between the groups over several generations.²³⁶

In the late 19th century, Rwanda had been controlled by Germany as part of the territory of German East Africa. Following Germany's defeat in World War I, control over the territory was given to Belgium. During this period, the Belgians introduced their mode of public administration in Rwanda, organizing Rwanda down to the level of the street and the household. "A strict hierarchy of government prevailed. The country was divided into eleven *prefectures* led by *prefets*; 145 *communes* led by *burgomestres*; 1,600 *secteurs* led by *conseillers*; and tens of thousands of *sous-secteurs* comprising small groups of households. At each level Banyarwanda [the Rwandan people] displayed

²³⁶ Phil Clark, "When the Killers Go Home: Local Justice in Rwanda," *Dissent*, Summer 2005, <http://www.dissentmagazine.org/article/?article=205>, accessed 8/8/2005

a high regard for authority.”²³⁷ As Mann points out, this system of public administration, combined with a good transportation infrastructure and relatively tightly structured set of civil society institutions (churches, agricultural cooperatives, credit associations, and development NGOs), created a tight network of social control.²³⁸ Another aspect of domestic political sovereignty introduced by the Belgian colonial administration was a system of ethnic identity cards, distributed after a 1933-34 census of the country, which sought to settle ethnic identity between Hutu and Tutsi along racial lines. “The Belgians . . . froze racial, political, legal, and educational privileges, reducing ethnic mobility.”²³⁹ After 1934, the divisions between Hutu and Tutsi took on more than socioeconomic significance; ethnicity became a political identity, one that persisted until after the 1994 genocide, when the system of identity cards was eliminated.

Following World War Two, Belgium was given a trusteeship over the Rwandan territory under the United Nations. Under the trusteeship, Hutu political activists began to call for political change and social revolution. In August 1959, the reigning Mwami, or king, died while receiving medical treatment in neighboring Burundi, and rumors spread among the Tutsi population that he had been poisoned. A popular Hutu uprising occurred the following November, and a number of violent attacks took place against the Tutsi population, beginning in central Rwanda and spreading throughout the country. The new Mwami deployed royalist troops in a counteroffensive, but the Belgian military, in an about-face from its historical support for the Tutsi, supported the Hutu uprising and put down the Mwami’s military actions. In early 1960, the leader of the Belgian military

²³⁷ Michael Mann, *The Dark Side of Democracy: Explaining Ethnic Cleansing* (New York: Cambridge University Press, 2005), 485-486

²³⁸ *ibid.*, 453

²³⁹ *ibid.*, 433

in Rwanda, Col. Guy Logiest, staged a coup and replaced all of the Tutsi chiefs with Hutu chiefs. Communal elections were held mid-year, and the Hutus won 90% of the top government posts. In October 1960, Col. Logiest declared that the Hutu social and political revolution was complete and installed Dominique Mbonyumutwa as head of the provisional government. At this point, 20,000 Tutsis had been displaced by the violence.

The transition to political independence in the early 1960s took place alongside the rise of the ideology of Hutu Power. Much of the driving force for political independence came from Hutu reaction against Tutsi hegemony that had been promoted sustained by the Belgian government throughout the period of Belgian colonial rule. The idea of Tutsi racial and cultural superiority was turned upside down; the Hutus were viewed as a simple, hardworking people whose land had been usurped by the arrival of the Tutsis from the north centuries earlier; now, on the cusp of independence, it was the task of the Hutus to take back their country from Tutsi dominance. Politically, this took the form of “majority democracy,” *rubanda nyamwinshi*, the dominance of public life by the Hutus and the exclusion of Tutsis from politics.²⁴⁰ Thus, although Tutsis would live alongside Hutus in the course of everyday life, public institutions would be controlled by the Hutus for the good of the Hutu majority. The presence of the Tutsis, of course, remained a problem for those who subscribed to this ideology, and it was this ideology that would ascend both in the early 1960s (during the initial attacks by Tutsi monarchist guerrillas) and again during the years leading up to the 1994 genocide (during the RPF invasions). As long as the Tutsis remained within Rwanda’s borders, it was felt that the Hutu majority could never feel safe.

²⁴⁰ Chris C. Taylor, “The Cultural Face of Terror in the Rwandan Genocide of 1994,” in Alexander Laban Hinton, ed. *Annihilating Difference: The Anthropology of Genocide* (Berkeley: University of California Press, 2002), 144

During the period from 1961 to 1962, the Tutsi monarchy was abolished under increasing pressure from both popular Hutu protests and from the Belgium government, which, as noted above, had turned its support away from the Tutsis and toward the Hutus. The people voted to create a republic, and Gregoire Kayibanda was elected President in 1962. However, in response to increasing guerrilla attacks from Tutsi monarchists, the government banned all non-Hutu political parties. From that point on, the Rwandan government has been dominated by single-party rule, while still using the rhetoric of democratic participation.²⁴¹ Belgium withdrew its military forces in 1962, and Tutsi supporters of the monarchy began to carry out guerrilla attacks against the government; Hutus responded by attacking Tutsi civilians. From December 1963 to January 1964, a number of massacres of Tutsi civilians occurred following sustained guerrilla attacks from across the Burundi border; during this time, almost a quarter of a million Tutsis fled into exile. These early massacres were also met with little or no punishment within the country.²⁴² By 1966, the Tutsi monarchists disbanded their guerrilla army and ceased their attacks.

Until 1961, Rwanda and Burundi had been treated as a single entity under Belgian colonial rule. Unlike Rwanda, Burundi chose to retain a monarchy within a constitutional framework, with Mwambutsa IV, a Tutsi, as king, after independence. The subsequent history of the two countries is closely intertwined, because of their shared colonial history and dominant ethnic divisions between Hutu and Tutsi; the enmity between Hutu and Tutsi with Burundi is also instructive. The monarchy was abolished in Burundi in 1966, which set off a period of civil unrest resulting in the massacre of over

²⁴¹ *ibid.*, 143

²⁴² Bill Berkeley, "Road to a Genocide," in Mills and Brunner, *The New Killing Fields: Massacre and the Politics of Intervention* (New York: Basic Books, 2003), 108

100,000 Hutus in 1972. Following this, around 200,000 Hutus fled Burundi and settled in Rwanda in 1972, which led to a civil unrest there. Following a military coup in July 1973, President Kayibanda of Rwanda was ousted by Major General Juvenal Habyarimana, who then declared himself president and instituted one party rule throughout the country, the National Revolutionary Movement for Development (MRND), seeking to take advantage of the growth of Western development aid money.

Pressure on the Tutsi people continued to grow, and by the early 1980s, over 1 million Rwandan Tutsis had left the country, with half of them settling into refugee camps in neighboring Uganda. Many of these Tutsi refugees joined the rebel army of Yoweri Museveni, who eventually overthrew the dictator Milton Obete and became President of Uganda. Realizing the dangerousness of this situation, Rwandan President Habyarimana closed Rwanda's border to all refugees.

At this point, Rwanda had become dependent on foreign aid; by the late 1980s, it accounted for 60% of Rwanda's annual budget.²⁴³ Because of this, Rwanda's economy was tied to the Western world's economic fluctuations. In 1986, the prices of coffee and tea, Rwanda's chief exports, crashed on the world's markets, and by 1989, the IMF and the World Bank were demanding that Rwanda implement a structural adjustment program. Deep cuts in the government's budget, mismanagement of agricultural resources, and a year of drought created areas of famine around the country, leading criticism of the government and social unrest, to which the government responded with crackdowns and repression. The dependency on foreign aid also created networks of corruption within the government, including the *akazu*, or little house, the true font of

²⁴³ Michael Mann,, 436, 439-440; Philip Gurevitch, *We Wish to Inform You That Tomorrow We Will Be Killed with Our Families: Stories from Rwanda* (New York, 1998: Farrar, Straus and Giroux),75-77

power within Rwanda, which was controlled by Habyarimana's wife Agathe and which had its power base in the northwestern areas of the country. Despite these adverse conditions, the mass violence carried out against the Tutsi population had largely disappeared under Habyarimana's rule.²⁴⁴

The early 1990s brought more instability to Rwanda. France had taken Belgium's place as paternal trustee for Rwanda under the Habyarimana regime in 1975, and it began to pressure Habyarimana to allow other political parties to have a place in the political process following the end of the Cold War; Habyarimana announced in July 1990 that a multiparty system would be established. The following October, Rwanda was invaded by the Rwandan Patriotic Front (RPF), an army made up of mostly Tutsi refugees who had fled to Uganda and who had taken part in Museveni's seizure of power. The government responded by arresting Tutsi civilians as RPF sympathizers. This set off a wave of local violence against Tutsis throughout the country. This tense situation also gave rise to virulent anti-Tutsi propaganda, including the newspaper *Kangura*, which was edited by Hassan Ngeze, who was a member of the Madame Agathe's *akuza*. In December 1990, *Kangura* published "The Hutu Ten Commandments," which was a militaristic doctrine of Hutu purity.²⁴⁵

The first half of 1991 saw numerous attacks against Tutsi civilians in northwestern Rwanda. The country's multi-party system began to operate during the summer of 1991; while most of the parties were fronts for Habyarimana's MRND, it is interesting to note that only one party had significant Tutsi membership, and the rest were

²⁴⁴ Alan J. Kuperman, "Rwanda in Retrospect," *Foreign Affairs*, January/February 2000, <http://www.foreignaffairs.org/20000101faessay8/alan-j-kuperman/rwanda-in-retrospect.html>, accessed 12/31/08; Mann, 438

²⁴⁵ Gurevitch, 87-88; Michael Mann, 443

divided between reformers and Hutu extremists. The main issue that dominated debate was the necessity of Hutu security; this gave rise to a new “Hutu Power” movement. The RPF invasion continued, and France began sending soldiers to advise and to fight alongside Habyarimana’s army as well shipments of arms. The war quickly drained the government of funds, so the army began a lucrative drug trade, setting up marijuana plantations in the forests. By early 1992, the Hutu Power extremists had become very well-organized, stockpiling weapons and creating youth militias, known as the *interahamwe*, “those who work together.” Further massacres of Tutsi civilians continued throughout the year.

The social divisions continued to grow between Hutu and Tutsi peoples throughout the country. By early 1993, all of the opposition parties had split into two factions, supporting either Hutu Power or not. This same year, the government granted a license to operate *Radio Television Libres des Mille* (RTL), the first non-government run radio station in the country, which began broadcasting anti-Tutsi programming²⁴⁶. A peace treaty between the Habyarimana government and the RPF, the Arusha Accords, was signed in August 1993, and plans were made to create a transitional government along with a power-sharing agreement. That same month, neighboring Burundi held free elections for the first time in thirty years, and a Hutu was elected president. The following November, the Burundian president was assassinated by the Tutsi dominated military; this triggered a Hutu uprising in Burundi, followed by a military crackdown, leaving more than 50,000 people dead. These events led Hutu Power activists in Rwanda to begin arguing that any peace accord with the Tutsis or the RPF was deceptive. Also in

²⁴⁶ Dina Temple-Raston, “Radio Hate,” *Legal Affairs*, September/October 2002, http://www.legalaffairs.org/issues/September-October-2002/feature_raston_sepoct2002.msp , accessed 8/22/2005

November, the United Nations began deployment of a small peace-keeping force, the UN Assistance Mission for Rwanda (UNAMIR) in Rwanda and Uganda, under the command of Major General Romeo Dallaire from Canada.

Dallaire was aware that his mission was under-funded and under-manned, yet he was able to stay abreast of what was going on within the country and maintain a steady flow of intelligence back to the United Nations about the situation within Rwanda. In January 1994, he learned of a plot to murder opposition leaders and UN soldiers, and he immediately faxed the information to the UN, but nothing was done.²⁴⁷

On April 6, 1994, a plane carrying Rwandan President Habyarimana, the new Hutu President of Rwanda, and Habyarimana's top advisors, was shot down near the Rwandan capital of Kigali, as they were returning from Tanzania (as of this writing, it has never been determined who shot down the plane, and investigations are still being conducted²⁴⁸). Within an hour of the plane crash, roadblocks had been set up around Kigali, and people, primarily Tutsis but also moderate Hutus, were being killed. Government radio and RTLM began urging violence against the Tutsi, blaming them for the murder of Habyarimana.

Prior to the genocide, the country's extensive political organization was utilized by the Hutu extremists to prepare to carry out the massacres more efficiently. Col. Theoneste Basagora, who would establish a provisional government in the wake of Habyarimana's assassination, created "self-defense" units in each *commune*, trained by

²⁴⁷ for his own account of the incident, see Lt. Gen. Romeo Dallaire, with Maj. Brent Beardsly, *Shake Hands with the Devil: The Failure of Humanity in Rwanda* (New York: Carroll & Graf Publishers, 2005), ch. 7

²⁴⁸ Felli Kimenyi, "Rwanda probing 1994 plane crash," *Boston Globe*, October 12, 2007, http://www.boston.com/news/world/africa/articles/2007/10/12/rwanda_probing_1994_plane_crash/, accessed 12/31/08

local military and police officials and instructed to act under the authority of the military, police, and local councilors; Basagora also made sure that weapons, including firearms but also machetes were distributed throughout the country.²⁴⁹ When the killing began, leaders of the killers were given lists of people to kill; according to one account given by Philip Gurevitch, “[they] had the number of everyone’s house, and they went through with red paint and marked the homes of all the Tutsis and moderate Hutus’”.²⁵⁰

The capital city was soon overrun with government soldiers, members of the Presidential Guard, and the *interahamwe*, who were armed mostly with machetes, clubs, spears, and farm tools, with their lists of people to kill. Their primary targets were Hutu opposition leaders, including the Hutu Prime Minister Agathe Uwilingiyimana, who was killed along with ten Belgian peace-keepers trying to protect her. The RPF quickly moved its own troops out of the city and launched an attack within the demilitarized zone but were met with strong government resistance.

The slaughter of Tutsis and Hutu opposition leaders spread from region to region after this. Within a matter of days, the Tutsi populations of many villages were completely eliminated.²⁵¹ The slaughter was also accompanied by rape and looting. Hours after the death of President Habyarimana, Col. Bagasora had set up a crisis committee, ratifying the coup in the name of Hutu Power, and several days later, the committee had appointed an interim government and set up its headquarters to the Hotel des Diplomates in Kigali. Fighting between government forces and the RPF continued around Kigali, however, and by April 12, the Hutu Power government had to flee the city

²⁴⁹ Martin Meredith, *The Fate of Africa: from the Hopes of Freedom to the Heart of Despair; a History of Fifty Years of Independence* (New York: Public Affair, 2005), 501

²⁵⁰ Gurevitch, 22

²⁵¹ Kuperman, 98

and take up residence in Gitarama. On April 21, Maj. Gen. Dallaire requested 5000 troops in hopes of ending the slaughter, but the UN leadership responded by slashing the UN force by 90%, leaving only 270 troops; a week earlier, Belgium had withdrawn all of its own troops from Rwanda.

As the killing continued throughout the country, the international community found itself deadlocked. Because of the deaths of American troops in Somalia the previous October, the United States was unwilling to commit any further troops to an African peacekeeping mission, and it blocked sending assistance through the UN Security Council. A number of nations pushed for increased UN troop strength in Rwanda, but this met with little success. By late May, the killing of the Tutsis had slowed down; it was now centered in the country's western provinces of Kibuye and Cyangugu. Most Tutsis who had not been murdered had fled the country. At the same time, in the eastern part of Rwanda, a quarter of a million Hutus, fleeing the RPF, crossed the border into Tanzania for safety. By early June, the United Nations was beginning to consider calling what was happening in Rwanda as genocide.

Meanwhile, France sought to salvage its political prestige in Rwanda²⁵² by protecting the Rwandan government from defeat at the hands of the RPF; France justified its position by arguing that the massacres were taking place because of mass outrage at Habyarimana's death. In mid-June 1994, France began to deploy a humanitarian mission under the auspices of the UN; many African leaders, including the RPF, questioned the motives of the French and found the plan unacceptable, but with the endorsement of the Security Council, the deployment began on June 23.

²⁵² see comments on this relationship in Dallaire, 62

When the French troops began arriving, the RPF controlled the eastern sections of Rwanda and were preparing to move westward. Their engagements with the Rwandan national army were easy victories for them. Within a week of the French arrival, French troops controlled a fourth of the country and sought to turn its territory into a “safe zone;” despite this, Tutsis continued to be murdered in French-controlled territory, and in most cases, the French military supported the local leaders who presided over the massacres. In July 1994, the RPF continued its successful offensive westward, taking Kigali back on July 4; by the 15th, over a half million Hutus fled the country in advance of the offensive, settling into refugee camps in Goma, Zaire. Two days later, the Hutu Power government fled to Zaire, and the RPF announced that it would form a new government along the lines laid down in the Arusha Accords. On July 19th, a new government was sworn in at Kigali. The Red Cross announced that month that one million people had been killed in the genocide (current estimates say that 800,000 Tutsi people were killed).²⁵³

Sudan

Throughout most of the region of Sudan, the village remains the center of everyday life. Communities are variously settled, semi-settled, or nomadic, and are organized around ethnic identity. Within these villages, descent groups are the primary basis of organization, although some are based around occupation of a common territory. These descent groups control religious rituals and access to political power and social

²⁵³ Gurevitch, 162

prestige.²⁵⁴ Although villages can exist largely independently of one another, most peoples identify with one of the major tribes of Sudan. Until recent years (as will be explained below), Arab tribes have not been regarded as a cohesive group and are divided into Juhanya, Jaali, and Kawahla, living in the northern regions of Sudan. The Nubian tribes live along the Nile River in far northern Sudan, including Darfur. The Beja tribes live in eastern Sudan in the Red Sea Hills region. The Fur remained an independent sultanate until 1916, as noted above, and they live in the central Darfur region. The Zaghawa tribes live in northern Darfur and across the border in Chad. Other smaller tribes living in northern Darfur include the Masalit, Daju, and Berti. Most of Sudan's non-Muslim peoples live in southern Sudan; the largest group is the Nilotes, which include the Dinka and the Nuer tribes; the Bari, Kuku, Kakwa, and Mandari tribes; the Murle and Didinga tribes, along the border with Ethiopia; the Azande of southwestern Sudan; and a number of other smaller tribes.²⁵⁵

Regional differences have dominated the political landscape of Sudan. Before independence in 1956, southern Sudan was already rising up against the perceived domination of national affairs by the peoples of northern Sudan; throughout the late 1960s and again after 1983, the central government did not exercise effective control over the southern half of the country, due to the existence of armed militias opposed to the government. This rift resulted in two major long-term civil wars which have lasted to the present day. The conflict in Darfur began in 2003, but its roots extend back through the entirety of modern Sudanese history, as the region was variously ignored by the central government or treated as a territorial pawn in conflicts with neighboring Chad and Libya.

²⁵⁴ Library of Congress, "A Country Study: Sudan," <http://lcweb2.loc.gov/frd/cs/sdtoc.html>, accessed 7/23/08

²⁵⁵ *ibid.*

The subsequent civil conflict in Darfur emerged from dissatisfaction over how the government had treated peoples in the region over the last two decades, and by May 2008, the rebel forces had made inroads almost to the capital city of Khartoum before being repelled. Although not chronicled in this case study, shortly after the turn of the millennium, conflict also began in the eastern section of Sudan, along the border with Ethiopia. The common element in all of these conflicts is the role played by the overrepresentation of northern politicians in the central government as well as the promotion of northern interests at the expense of other regions. These regional differences within Sudan, particularly between north and south, have prevented the country from being governed as a unitary political entity.

Except for periods of military rule from 1958 to 1964, in 1969, and in 1989, Sudan has been governed as a parliamentary democracy. A number of political parties have been active since independence, and their number has grown over time. At the same time, the existence of strong political parties in country is also indicative of deep divisions within Sudanese society regarding how the country is to be governed, particularly with the distinctly religious parties, such as the Umma Party and the National Congress Party. Until 1983, President Nimeiry sought to govern Sudan as a secular state, but continuing pressure from Islamist groups led him to adopt an Islamic form of state. The majority of people in Sudan are Muslims, so support for this form of government is not surprising, but a substantial number of people, living in the south and in the Darfur region, are not Islamic, but rather are Christians and practitioners of animist religions, and they have suffered both discrimination and active persecution, since they fall outside of the *dar al-Islam* (domain of Islam).

Following the Second World War, the country of Sudan remained a colonial possession of the British government and was ruled jointly by Britain and Egypt as a condominium. Petitions for independence had begun just prior to the end of the war, and political parties grew up around a number of group interests: those committed to remaining in union with Egypt, those seeking to regain an independent Mahdist government (which had ruled the region from 1884 to 1898), those promoting Communism, and those belonging to a local section of the Muslim Brotherhood. Parliamentary elections were held in 1953, with the Hizb al-Ittyaddiyin (the Unionist Party) winning the majority of seats, followed by the Umma (the pro-Mahdist party).²⁵⁶ Prompted by the revolution in Egypt in 1952, the British signed an agreement with Egypt to leave Sudan, which became independent in January 1956.

During the period of British colonial rule of Sudan, particularly from the 1920s to 1956, Sudan was governed as two separate countries, divided between north and south, between the 8th and 10th parallels. The northern area was mostly Muslim, economically developed, more urbanized, and had traditional ties with Egypt and the rest of the Arab world, while the south was divided between Christian and tribes with animist beliefs, largely undeveloped, and had closer ties with sub-Saharan Africa. The British had carried out this policy in order to contain the spread of Islam from the south and to allow Christian missionaries to convert the animist believers of the region.²⁵⁷ Just prior to 1956, northerners began to dominate the civil administration of the country as the British began pulling out; out of almost 800 civil positions, the southerners held only six of

²⁵⁶ Gerard Prunier, *Darfur: The Ambiguous Genocide* (Ithaca, NY: Cornell University Press, 2005), p. 36

²⁵⁷ Library of Congress, "Sudan: A Country Study," <http://lcweb2.loc.gov/frd/cs/sdtoc.html> accessed 7/23/08

them.²⁵⁸ In 1955, an insurgency began in southern Sudan as military units mutinied and seized control of Equatoria province, but the national government quickly quelled the revolt. However, this uprising would sow the seeds of further rebellion in southern Sudan, beginning again in 1963.

During this early period of Sudan's modern history, the Darfur region was largely ignored. Darfur had been an independent sultanate from the 15th to the early 19th centuries, when it was conquered by the Egyptian army in 1821. The Mahdiyya uprising in 1881 threw off Egyptian rule for a time, until the intervention of the British in 1898. The Darfur region itself remained largely autonomous until 1916, when the British army finally subdued Ali Dinar, the ruler of Darfur, out of fear that he might lend his support to the Ottoman Turks during the First World War, and the region was made a part of Sudan.

As noted above, the ethnic and religious make-up of the Darfur region has been (and remains) complex and shifting. The dominant tribe in the region is the Fur, whose lives are largely based around settled cattle herding in the central Jebel Marra mountain region; they are Sunni Muslims and speak both a Nilo-Saharan language as well as Arabic. Until recent years, they shared the same land as the Bagarra, a Bedouin tribe who also live in other countries in northern central Africa; they, too, speak an Arabic dialect, are Sunni Muslims, but they are nomadic, grazing their camels and cattle from one area to another seasonally. The Zaghawa people live in western Sudan and Chad, are an ethnically African (Saharan) tribe who are semi-nomadic, and practice Islam; they are related to the Bidayat, who live in the same region and are more nomadic. The Masalit tribe also live in western Sudan and Chad and speak a Nilo-Saharan language, but who

²⁵⁸ Martin Meredith, *The Fate of Africa: A History of Fifty Years of Independence* (New York: Public Affairs, 2005), pp 344-345

also practice Islam. The Berti tribe lives in northern Darfur and is related to the Masalit people, and they practice settled agriculture and husbandry; their Nilo-Saharan language today has been largely replaced by Arabic. These groups had settled in the region by the end of the 16th century and were followed by two more larger migrations of peoples from the east, the latter of which was the *awlad al-Bahar*, Arab tribes who lived along the Nile River and its tributaries and who settled almost exclusively in towns and came to control the economy of the region.²⁵⁹

Following independence, the Umma Party came to power in the Sudanese government, but these years were marked by economic instability and the growing rebellion in the south. In 1958, the military seized the central government; the country finally gave way to civilian rule again in 1964, with Umma Party still in power under Sadiq al-Mahdi, grandson of the party's founder. During the period of military rule, opposition forces in the south coalesced into the Anyana guerrilla group and fought against the government's promotion of Islam as the official religion throughout the country; the subsequent civilian government refused to accept this group's demands for regional autonomy and continued with the goal of establishing an Islamic republic in Sudan. Prior to national elections in 1968, the Umma Party split into two factions. The Darfur region had traditionally lent its support to the party, but after the split, both factions began making appeals to the different tribes, seeking to split the support along ethnic lines. It was during this time that the rhetoric of "African" versus "Arab" was introduced into political debate and which would later become a factor contributing to the polarization of ethnic identities in the region.²⁶⁰ Another military coup in 1969 brought

²⁵⁹ Prunier, 6-7

²⁶⁰ Prunier, 41-42

Col. Jafaar al-Nimiery to power, whose government initially sought to emulate Nasser's socialist reforms in Egypt and which was opposed to the predominance of religious-based political parties. In 1972, Nimiery came to a peace agreement with the southern insurgency, and in 1973, a new constitution was introduced that gave significant autonomy for the south and recreated Sudan as a secular state.

In the mid-1960s, civil war was beginning in neighboring Chad. Chad had achieved independence from French colonial rule in 1960 and had come under the autocratic rule of President Francois Tombalbaye. Resistance to his rule coalesced in the mid-1960s throughout the country, and a number of organizations arose in opposition to his government. In Sudan, the National Liberation Front of Chad (FROLINAT) was formed in Nyala in 1966, and its forces grew in the following years, with the establishment of bases in Darfur. The Sudanese government supported the insurgency against Tombalbaye's government because of his opposition to Islam in the name of Pan-Africanism. FROLINAT was eventually expelled from Sudan in 1971 after fighting with the Chadian government spilled over onto Sudanese territory in Darfur.

Another complicating factor with the civil war in Chad was the rise of Col. Muammar Gadaafi in neighboring Libya in 1969. He became involved in the civil war in Chad, lending to support to FROLINAT and allowing them to establish bases on Libyan soil. Gadaafi initially had cordial relations with the Sudanese government under Nimiery, but this went sour after in 1971 after Nimiery rejected Gadaafi's suggestion that Sudan and Libya form a union of their two countries and made peace with the southern insurgency in 1972. To further his own revolutionary ends in the region, Gadaafi established the Failaka al-Islamiya (the Islamic Legion) to help overthrow the Chadian

government, and he supported the Tajammu al-Arabi (Arab Union), a pan-Arabist organization in Darfur; both organizations operated on Sudanese soil.²⁶¹ Gadaafi also lent his support to Umma Party leader Sadiq al-Mahdi, who had been jailed following the Nimiery coup but who was released in 1972 and moved to Tripoli.

The Tombalbaye government in Chad fell in 1975 after the president's assassination, and the Sudanese government sought some rapprochement with the new government under Gen. Felix Malloum in order to diffuse growing civil unrest in the Darfur region. However, Libya's Gadaafi had already established bases in a disputed border region between Libya and Chad and was aiming to conquer the country and join it with Libya. Gadaafi also supported a coup against the Sudanese government in 1976, led by Sadiq al-Mahdi and Baggara tribesmen, which gained control of Khartoum for three days before being defeated; this was followed by brutal acts of repression against civilians in Darfur who were accused of sympathizing with the coup attempt, leaving some 3000 dead.²⁶²

In an effort to avoid further instability inside of Sudan, President Nimiery brought prominent Muslims into his government in 1977, including Sadiq al-Mahdi and al-Madhi's brother-in-law, Hassan al-Turabi, hoping to appease critical opposition in the north. Al-Turabi was the founder of the Muslim Brotherhood in Sudan and had been involved with Islamist politics since the 1960s. Oil was discovered in southern Sudan in 1978, and that led to renewed regional tensions between north and south; the south was already suspicious of Nimiery's growing rapprochement with Islamic political groups. The southern government had initially sought the construction of an oil refinery in the

²⁶¹ Prunier, 45

²⁶² Prunier, 46; Meredith, 356

south, but the Nimiery government instead built a refinery in the north and had a pipeline constructed directly to the Red Sea for direct export of crude oil.²⁶³ By the end of the 1970s, the Sudanese government was also lending its support to Hissan Habre and his Northern Army (FAN) in Chad because of his opposition to both the Malloum government and Libya's designs on Chad. The FAN began using Darfur as a base and staging area for attacks upon Chad.²⁶⁴ "This rough handling of Darfur by the Libyans, the Chadians and the Khartoum forces decisively worsened the regional ethno-political landscape. Tribes which had seen themselves primarily in local terms were suddenly catapulted into a broader artificial world where they were summoned to declare themselves as either 'Arab' or *zurqa* [Arabic for black, a euphemism for African]. . . . Darfur did not seem to matter enough to be taken seriously at the level of good governance, but it certainly mattered enough to become an increasingly racialized battleground between Khartoum, Tripoli, and Ndjamena."²⁶⁵

The Nimiery government began to undertake a number of reforms throughout the country. The Regional Government Act of 1979 sought to make provincial governments more responsive to their local populations by appointing solely local leaders. In the Darfur region, the central government attempted to appoint an outsider to the area as governor, in order to oversee Hissan Habre's military efforts, but this was met with popular protest, and Ahmed Diraige, a respected Darfurian leader, was appointed in his place. In 1983, due to pressure from al-Turabi, then the Attorney General, and from other prominent Muslims in the north, Nimiery declared an "Islamic revolution" and began to institute Islamic legal reform over the country and to support the establishment

²⁶³ Meredith, 356

²⁶⁴ Prunier, 46

²⁶⁵ *ibid.*, 46, 47

of Islamic banks. He also undid the 1972 peace agreement with the southern provinces and tried to redraw the boundaries of the northern provinces to include the oil fields and agriculturally productive land in the Upper Nile region.

The changes had dire consequences for the country. Civil war erupted again with the south; national army troops in the south deserted and reformed themselves across the border in Ethiopia as the Sudan People's Liberation Movement, led by Col. John Garang de Mabior, a member of the southern Dinka tribe. They received support from both Ethiopia's government and Libya's Muammar Gadaafi. A drought in 1983 led to catastrophic food deficits in the region, including Sudan, in 1984 and 1985; Nimiery at first refused to acknowledge the problem, but by the second half of the year, camps for internally displaced persons began appearing outside of Khartoum. At least a quarter of a million people died before the government began to accept food aid, and 95,000 died in Darfur alone.²⁶⁶ Economic problems increased, including a growing national debt and inflation. Popular protest against Nimiery grew, and in April 1985, he was overthrown by his own military.

Elections were held in 1986, and with the assistance of millions of dollars in election funds from Libya, Sadiq al-Mahdi and his Umma Party won.²⁶⁷ In return, Gadaafi began sending convoys of humanitarian relief and military troops into the Darfur region; he also began arming the Baggara tribes, whom he saw as "Arab" allies in the region. Because of his renewed ties with the Sudanese government, Gadaafi began to lend his support to government forces in the southern civil war. The government under al-Mahdi remained a firmly Islamic state, maintaining the changes introduced by Nimiery

²⁶⁶ Meredith, 358; Prunier, 56

²⁶⁷ Prunier, 52-53

in 1983. He too began arming the Baggara tribes (known as the *murahaleen* militia), in hopes of using them in the civil war, and he allowed them to attack the Dinka and Nuer tribe civilians in Bahr al-Ghazal in southern central Sudan. At the same time, because of the drought of 1983-84 and the increasing desertification in Darfur, the traditionally cooperative relationship between settled and nomadic peoples in use of the land was becoming more difficult to maintain, as farmers began fencing off areas through which nomads herded their livestock and began burning off wild grasses that nomads were hoping to use as fodder for their animals.²⁶⁸

Libya also continued its efforts to overthrow the government in Chad, and it was using its troops and local Arab recruits in Darfur to that end. In April 1987, the Chadian army crossed the border into Darfur and attacked these forces, wiping out most of their fighting capacity. “Arab” tribes increasingly supported the central government’s efforts to defeat the south in the civil war and to support Libya’s efforts in Chad, while “African” tribes like the Zaghawa and Salamat fighting in the Chadian civil war turned against the Fur, who in turn began to organize their own militia. Further incursions by the Chadian army into Darfur in 1987 and 1988 only increased these tensions.

The role of Arab identity has been prominent feature in the Darfur conflict. The conflict between Pan-Arab versus Pan-African affiliation from the 1960s was felt in the region; the civil war in Chad and the long presence of the Libyan military in the region also contributed to polarization of ethnic identity. This was even further exaggerated with conflicts among different tribes over land and water rights follows desertification and the rise of the el-Beshir regime beginning in 1989. The central government continued to favor the “Arab” tribes, eventually recruiting a number of them for the

²⁶⁸ *ibid.*, 56-57

Janajaweed (more below), while neglecting and eventually attacking “Africans” in the region. Despite this forced attempt to impose identity on the different tribes in the region, as noted earlier, the ethnic make-up of each tribe is different. Some tribes speak Arabic as their main language, while others do not; many of the tribes are Muslims, despite being considered “African;” and there is a mix of both settled agriculture and nomadic herding among both “Arab” and “African” tribes. All peoples in the region are dark-skinned, and because of centuries of immigration and inter-marriage, physical features are not indicators of identity. Yet, the idea of a distinct “Arab” identity remains an active belief.

In 1988, all of these problems came to head when there was another drought in Sudan, and the Nile River flooded Khartoum, disrupting communications and transportation and leading to another famine throughout the country. There was mass starvation, particularly in the south, and there were refugee movements to the north in search of food, where over three million people settled into the slums of Khartoum.²⁶⁹ By this time, the Darfur region was in chaos, with the Libyan government in *de facto* control, and members of the government and the military were pressing al-Mahdi to accept some sort of peace agreement with the forces of the SPLM in the south, yet this was opposed by members of the National Islamic Front, later known as the National Congress Party. Finally, in June 1989, a group of pro-NIF army officers led by Col. Omar al-Beshir overthrew the al-Mahdi’s government.

A key concept to understanding many of the problems that would follow in Sudan is the use of the Islamic term *jihad*. The central government, now controlled by the National Congress Party, sought to turn Sudan into an Islamic state and to impose

²⁶⁹ Meredith, 360

shariah law throughout Sudan, first after 1983 and again after the 1989 coup. In the 1990s, the government began lending support to various Islamic terrorist organizations regionally and throughout the world in the name of the Islamic struggle (*jihad*). This was influenced in part by the successes of Gadaafi's coup in Libya and the Shi'ite revolution in Iran as well as by the ideology of the Muslim Brotherhood, an Egyptian group whose own influence has been extremely far-reaching throughout the Sunni Muslim world since the 1920s. Sudan, because of its proximity to Egypt, has had close connection with the Muslim Brotherhood, but the group's ideas did not gain in popularity until the late 1970s, with the rise of Hassan al-Turabi and his National Islamic Front party. Within the ideology of this group, modernity and its political institutions, in the form of the secular state, are viewed as a source of evil and disconnection from the will of Allah. It is believed that the devout Muslim will bring back a kind of "natural" order to the world by taking over the reigns of the state and reestablishing the centrality of *sharia* law throughout the land. Al-Turabi pursued this course through a "top-down" approach while in office, seeking to place sympathetic believers in top political positions and change institutions through the power they gain. Al-Turabi was regarded by the government as "Guide" of this Islamization of Sudan until his arrest in 2003.

Prior to the coup, local tribal leaders in Darfur began to consult with one another and initiate their own peace process in the region. All parties were exhausted by the conflict, and many were aware that much of the fighting was being engineered by Libya for its involvement in Chad. By the summer of 1989, the situation in the region had largely, if not precariously, settled down. At the same time, the new Sudanese government sought help from Libya to carry on its war against the south; in return, Libya

wanted to remain in Darfur to carry on its war against Chad. By September 1989, conflict was reignited in Darfur as Idriss Deby, former supporter of Hissen Habre, fled to Sudan and later formed the Patriotic Salvation Movement (with Libyan backing), which would eventually overthrow the Habre regime in 1990, all the while bringing the Chadian civil war into Darfur once again.

The Sudanese government under al-Beshir continued the country's movement toward "Arabization" and "Islamization," under the guidance of Hassan al-Turabi and his National Islamic Front. Throughout the 1990s, more and more strict regulations were introduced throughout the country, and the use of Arabic was required in government and education, while the cultures of non-Arabic peoples were denigrated.²⁷⁰ Any dissent was quashed, people could be detained without trial, and a number of secret prisons were set up where torture and rape were used to extract confessions.²⁷¹ A militia was created, the People's Defense Force, used to suppress civilian demonstrations and later to supply manpower to the war effort in the south.²⁷² The central government also undertook efforts to reorganize the federalist structure of the country, creating twenty-six states out of the existing nine and re-establishing tribal administration in each of them; this was done in order to increase support for the NIF among tribal chiefs and to undermine the local electoral influence of the Umma and Union Parties.²⁷³ During this time, Sudan also became a supporter of Islamist militant activity around the world against what it saw as American imperialism following the 1991 Iraq War; this included giving aid and comfort to individuals such as Egyptian cleric Sheikh Omar Abdel Rahman and Osama bin

²⁷⁰ Meredith, 589

²⁷¹ *ibid.*, 588-589

²⁷² *ibid.*, 589

²⁷³ Prunier, 74-75

Laden, as well as offering to recruit and train *mujahideen* for involvement in Islamic conflicts around the world.

The situation in Darfur began to “settle” once again. Another drought in 1990 had led to food shortages for the following year, but this had been met only with a lackluster response from the central government. John Garag of the SPLM in southern Sudan had attempted to link his group with the dissatisfaction of peoples in Darfur with the central government, culminating in an attempted insurrection in 1991-92, but this ended in failure. The conflict between Chad and Libya had now come to an end, and the Libyan presence in Darfur was slowly disappearing. “[Nothing] had been solved in depth, but on the surface things had slowed down. It was not exactly peace, but it was no longer open war – just a state of diffuse insecurity where villages would be attacked once in a while, where trucks traveling to and from the markets were liable to get ambushed but where long periods of calm would give the impression that things were basically all right and that all this was simply an expression of some kind of ‘traditional’ or ‘tribal’ violence.”²⁷⁴

The civil war in southern Sudan continued throughout the 1990s, now as a “regional *jihad*” by the central government. It sought to exploit growing factionalism within the SPLM by offering Riek Machar, an opponent of John Garang within the SPLM, a separate peace agreement in 1997 as well as hinting at a share in future oil revenues.²⁷⁵ The latter became a reality with the creation of the Greater Nile Petroleum Operating Company in 1997 and the opening of the Greater Nile Oil Pipeline in 1999,

²⁷⁴ *ibid.*, 74

²⁷⁵ Meredith, 594-595

and Riek's forces, as well as Baggara militias, were employed to secure the oil fields and pipelines by driving out the local populations of Nuer and Dinka peoples.

In August 1998, the United States government responded to a series of al-Qaeda-linked car bombings of its embassies in Africa by a cruise missile attack on a pharmaceutical plant north of Khartoum, suspected at the time of producing chemical weapons. "The combination of Sudan's record of supporting international terrorism, its savage conduct of the war in the south and its repression of all opposition had made Bashir's government one of the most reviled in the world."²⁷⁶ The central government also began dealing with internal pressures. Low-level guerrilla activity by the Masalit tribe in northwestern Darfur against the government took place from 1996 to 1999 and ended with government forces occupying Dar Masalit, killing thousands and sending tens of thousands fleeing as refugees.²⁷⁷ The relationship between Hassan al-Turabi and Omar el-Beshir was growing strained as well. International pressures to curb support for terrorism, to reach a settlement in the south, and the government's desire to increase international investment in the burgeoning oil industry led el-Beshir to distance himself from al-Turabi and the more extreme Islamist policies of the NIF.²⁷⁸ In December 1999, al-Turabi was ousted from his position as President of the Parliament, and in 2000, Parliament was dissolved, the offices of the National Congress Party were closed, and a state of national emergency was declared.

That same year, a xeroxed book was anonymously published and publicly distributed, *The Black Book: Imbalance of Power and Wealth in Sudan*; a second part was published the following year. The book described how Sudanese political life had

²⁷⁶ *ibid.*, 595

²⁷⁷ Prunier, 75

²⁷⁸ *ibid.*, 83; Meredith, 595

been dominated since independence by northerners, to the detriment of peoples from other regions.²⁷⁹ In February 2001, al-Turabi's breakaway political party, the Popular National Congress, signed a cooperation agreement with the SPLM, and al-Turabi was subsequently arrested (though released several months later). Finally, in the summer of 2001, the SPLM launched an offensive from Bahr el-Ghazal province into southern Darfur, in order to link up with discontent created following the Dar Masalit uprising, but the central government unleashed a counter-offensive later in the year that began targeting civilians, using both aerial attacks and the local *Murahaleen* militia.

Given these growing internal divisions within the country and continued international pressure following the terrorist attacks on the United States in September 2001, el-Beshir sought to further distance himself from radical Islamic politics by publicly denouncing terrorism and vowing to cooperate with the United States in measures aimed at al-Qaeda. The United States, through Senator John Danforth, was instrumental in brokering an end to the war in the south, culminating in the signing of the Naivasha Agreement in January 2005.

While the rest of the world focused on the peace process to end the war in the south, the situation in Darfur was once again deteriorating. From November 2002 to February 2003, a low level of conflict broke out against government and police targets, seemingly of no different character than other localized conflicts in the region in recent years; the government referred to them as nothing more than attacks by "bandits."²⁸⁰ However, these attacks had been undertaken by members of the Sudanese Liberation Movement (SLM), an organization created from the remnants of Fur self-defense militias

²⁷⁹ The authors of the book have been linked to the Justice and Equality Movement involved in the Darfur Conflict; see Prunier, 93

²⁸⁰ *ibid.*, 92

in the late 1980s, and the Justice and Equality Movement (JEM), led by Khalil Ibrahim, former Minister of Education for Darfur in the 1990s and reputed author of the *Black Book*. The insurgency launched an offensive that lasted throughout the summer of 2003. In response, the central government reorganized the administration of the Darfur region and began to recruit militias, which came to be known as the *Janjaweed*, to carry on the fighting on the ground.²⁸¹ In the mid-summer, the government began carrying out a pattern of attacking civilian targets, under the guise of fighting a counter-insurgency, using bombers and helicopters to attack villages from the air, then unleashing the *Janjaweed* (sometimes with army assistance), who would loot homes and steal livestock, rape girls and women, and kill anyone who did not flee. This created hundreds of thousands of refugees in the region in a few weeks, who often moved toward the cities or over the border into Chad. Often, the *Janjaweed* would harass the refugees, stealing from them and continuing to capture and rape girls and women who ventured outside safe areas for water and firewood.²⁸² By early 2004, a million people had fled their homes, and at least thirty-thousand had died.²⁸³ The government also began arresting hundreds of people in the region that it suspected of having connections with the rebel group, holding them in prisons and in many cases torturing them.

As news began to leak out of Sudan about the conflict in Darfur later in 2003, the al-Beshir government denied that a rebellion was taking place; by early 2004, it changed its position and said that the rebellion would soon be under control. It blocked access to

²⁸¹ *Janjaweed* is term meaning “ghost riders” or “evil horsemen,” and is made up of a diverse mix of unemployed youths, criminals, and former soldiers chosen on the basis of their “Arab” background; see Prunier, 97-98

²⁸² Prunier, 101-102; see also Samantha Power, “Dying in Darfur,” *The New Yorker*, August 30, 2004, pp.57-58, http://www.newyorker.com/archive/2004/08/30/040830fa_fact1

²⁸³ Meredith, 599; Power, 68

the region to outside observers, and it took control of food aid coming into the country slated for Darfur. The government launched another offensive in the region in early 2004, using ten of thousand of regular army troops.²⁸⁴ Fighting also increased along the border with Chad; this eventually led to instability inside of Chad and a coup attempt against President Idris Deby by members of the Zaghawa tribe, who wished to force him to drop his support of the Sudanese government's policies. By the spring of 2004, a humanitarian presence was beginning to grow in the region, but the rainy season, lack of security, and government interference kept many of the food convoys from reaching the camps where aid was most needed. The Chadian government brokered a ceasefire agreement in April between the rebel groups and the government, and the African Union sent observers to monitor the ceasefire, but attacks continued. In July, the U.S. Congress passed a resolution calling the killings a genocide, and the UN Security Council placed an arms embargo on Darfur region; this was followed in September 2004 by statements from both the European Parliament and American Secretary of State Colin Powell supporting claims of genocide, but neither committed themselves to take action beyond providing relief supplies. At the same time, the United Nations opened a Commission of Inquiry to investigate whether a genocide was in fact taking place in the region.²⁸⁵

Shaky negotiations had been ongoing between the rebel forces and the government, but rifts were beginning to emerge between the rebel groups. At the time of the ceasefire agreement, The National Movement for Reform and Development (NMRD)

²⁸⁴ Prunier, 111

²⁸⁵ The Commission submitted its report to the UN Secretary General in January 2005, and while it found an enormous amount of evidence related to violations of human rights, it did not identify "genocidal intent" on the part of the Sudanese government; see *Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General*, http://www.un.org/news/dh/sudan/com_inq_darfur.pdf, accessed 7/17/08

broke away from the JEM because it felt that its demands were not focused enough on the needs of the Fur people. The JEM had a strong Islamist agenda and was allied with al-Turabi's Popular National Congress, while the SLM was more regional and secular and had allied itself with the Northern Democratic Alliance, a northern group opposed to the el-Beshir regime and the NIF, and also allied with the SPLM in the south. Fighting broke out between these two main rebel groups in Darfur in November 2004.

The massive amount of violence had led to a point where the society had almost ceased to function. Communities were not only at each other's throats, but they were quickly becoming incapable of regulating themselves on a day-to-day basis. The whole of Darfur was turning into a lawless refugee camp where social patterns were under severe strain. The *Janjaweed* had been delinquents and socially marginal people from the start, but the guerrillas were now increasingly losing control of themselves and bandit groups were quickly springing up.²⁸⁶

Another government offensive began in December 2004, just prior to the signing of the Comprehensive Peace Agreement with the SPLA in the south, aimed at "clearing" the roads in Darfur. The UN Security Council referred the Darfur case to the International Criminal Court in March 2005. By the summer of 2005, the provisions of the Comprehensive Peace Agreement took effect, and a government of national unity was created, making SPLM leader John Garang First Vice-President of the Sudanese government, but he was killed in helicopter crash on July 30, shortly after taking office. Following a brief lull in the summer months, reports of government air attacks against civilian targets in Darfur began to increase beginning in September 2005.²⁸⁷

Despite media worldwide media attention and international outcry over the events in Darfur, attacks on civilians continued to take place, and access to humanitarian relief supplies continued to be limited in the region. In May 2006, the Darfur Peace Agreement

²⁸⁶ Prunier, 122

²⁸⁷ Eric Reeves, "A Final Solution for Darfur: The View from Khartoum", October 9, 2005, <http://www.sudanreeves.org/Sections-article530-p1.html> access 7/17/08

was signed in Abuja, Nigeria, by breakaway SLM leader Minni Minawi; this agreement laid out changes in the governance of the Darfur region as well as increased participation in the central government; it also established the Transitional Darfur Region Authority, which was to be implemented the following April.²⁸⁸ The other rebel groups, including the JEM and the remaining faction of the SLM, opposed the peace agreement and joined together as the National Redemption Front, headed by long-time Darfurian leader Ahmed Diraige. The United Nations Security Council passed Resolution 1706 in August, creating a mandate for a peace-keeping force in the region;²⁸⁹ this received support from both the SLM and the Chadian government.

Conflict on the border between Sudan and Chad continued throughout 2006. By January 2007, Chad had taken some 200,000 refugees from Darfur,²⁹⁰ and on more than one occasion, Chad accused the Sudanese government of lending support to anti-government rebels in its own country and had closed its own consulate in Darfur. These conflicts seemed indicative that the Sudanese government was not honoring the peace agreement it had signed in May; in fact, observers noted that in the latter half of 2006, attacks against civilian targets continued unabated.²⁹¹ This pattern continued into 2007, culminating in an attack on African Union peacekeepers in April.

²⁸⁸ Darfur Peace Agreement, http://www.unmis.org/english/2006Docs/DPA_ABUJA-5-05-06-withSignatures.pdf accessed 7/17/08

²⁸⁹ UN Security Council, Resolution 1706, S/RES/1706 (2006), <http://daccessdds.un.org/doc/UNDOC/GEN/N06/484/64/PDF/N0648464.pdf?OpenElement> accessed 7/17/08

²⁹⁰ UN High Commissioner for Refugees, Chad/Darfur Emergency, September 20, 2008, <http://www.unhcr.org/cgi-bin/texis/vtx/chad?page=news&id=433029644> accessed 12/26/08

²⁹¹ Jonathan Steele, "UN official: Khartoum knew of Darfur militia raid," *The Guardian*, October 10, 2006, <http://www.guardian.co.uk/world/2006/oct/10/sudan.jonathansteele>, Associated Press, "Army attack against Darfur civilians was unprovoked," *Sudan Tribune*, November 25, 2006, <http://www.sudantribune.com/spip.php?article18893>, and BBC News, "Sudan 'begins new Darfur attacks'," <http://news.bbc.co.uk/2/hi/africa/6161692.stm>, accessed 7/17/08

In February 2007, the International Criminal Court handed down indictments, against Ahmed Haroun, former interior minister for Darfur in 2003 and 2004, and against Ali Khushayb, a *Janjaweed* leader.²⁹² El-Beshir and President Idris Deby of Chad signed a peace agreement in May, attempting to ease tension between the countries as fighting continued along the border region; the agreement, brokered by Saudi Arabia, stated that the governments of either country were forbidden to support rebel groups aimed at destabilizing the others' country. In the same month, Amnesty International released a report stating that Russia and China were supplying military equipment to Sudan in defiance of the UN arms embargo that was being used in the Darfur conflict.²⁹³ The UN Security Council passed Resolution 1769 in July, which approved the creation of a hybrid UN/AU peace-keeping force which was set to merge with the existing African Union force by December; its deployment began in October 2007.

Cooperation among the different rebel groups was sought during a conference held in Arusha, Tanzania, in August, in order to smooth out differences among themselves and to allow the peace agreement to be put into place more effectively. During peace negotiations with the government sponsored by the UN and AU in subsequent months, there were still disagreements among the rebel groups, and this delayed progress in discussions. Finally, in November 2007, six of the groups signed a Charter of Unification and agreed to take on the SLM name.²⁹⁴ Throughout 2007, unity among the tribes making up the *Janjaweed* was weakening, as fighting broke out between the

²⁹² International Criminal Court, "ICC Prosecutor Presents Evidence On Darfur Crimes," February 27, 2007, ICC-OTP-20070227-206-En, http://www.icc-cpi.int/pressrelease_details&id=230&l=en.html accessed 7/17/08

²⁹³ Amnesty International, "Sudan: Arms Continuing to Fuel Serious Human Rights Violations in Darfur," May 28, 2007, <http://www.amnesty.org/en/library/asset/AFR54/019/2007/en/dom-AFR540192007en.html> accessed 7/18/08

²⁹⁴ JUBA, "Nine Darfur rebel factions reunite under one structure," *Sudan Tribune*, November 15, 2007, <http://www.sudantribune.com/spip.php?article24751> accessed 7/18/08

Terjem and Mariah tribes, the Habbaniya and Salamat tribes, and the Habbaniya and Falata tribes, all in southern Darfur; most of the fighting took place over water, land, livestock, and the ability to tax travel through certain trade routes.²⁹⁵

The UN-African Union Mission in Darfur (UNAMID) officially began its mission in January 2008. Although peace talks between the rebels in Darfur and the Sudanese government were still ongoing, in February 2008, the government began another offensive along the border with Chad, leaving between 8000 and 10,000 refugees trapped between the army and Chadian border.²⁹⁶ In April, John Holmes, UN undersecretary for humanitarian affairs, announced to the Security Council that according to new estimates, the number of dead in the Darfur conflict is close to 300,000 people.²⁹⁷ Much attention was brought upon China throughout early 2008, which was hosting the Summer Olympics in August, regarding its role in the Darfur conflict.²⁹⁸ In May, the JEM militia advanced to the city of Obdurman, across the Nile River from Khartoum; government forces managed to re-secure the area in a few days. Conflicts also began again on the border between northern and southern Sudan between rival militia groups later in May. Also, as of May 2008, the UNAMID deployment remained only at 9500, short of its authorized strength of 19,000 troops. In July 2008, Luis Moreno-Ocampo, Prosecutor for

²⁹⁵ Mohamed Osman, "200 Die in Darfur Water Feuds," *Sunday Republican*, January 14, 2007; also Jeffrey Gettleman, "Chaos in Darfur Rises as Arabs Fight with Arabs," *New York Times*, September 3, 2007, <http://www.nytimes.com/2007/09/03/world/africa/03darfur.html?scp=1&sq=&st=nyt> accessed 7/18/08

²⁹⁶ "New wave of Darfur refugees flees into Chad," CNN.com, February 12, 2008, <http://edition.cnn.com/2008/WORLD/africa/02/12/chad.refugees/index.html> , accessed 7/18/08

²⁹⁷ Roxanne Escobales et al., "Darfur dead 'could number 300,000,'" *The Guardian*, April 23, 2008, <http://www.guardian.co.uk/world/2008/apr/23/sudan.unitednations> accessed 7/18/08

²⁹⁸ for example, see Eric Reeves, "Beijing's Propaganda Campaign Can't Obscure Complicity in Darfur's Genocide," March 5, 2008, <http://www.sudanreeves.org/Article207.html> accessed 12/26/08

the International Criminal Court, announced that the court was seeking an arrest warrant for Omar el-Behsir for crimes against humanity committed during the Darfur conflict.²⁹⁹

Conclusions

Now that I have explored these five cases of crimes against humanity, I want to mention a few caveats. In writing the chronological narratives, I have sought to focus on the major political, social, and economic events that led up to the incidents of crimes against humanity against a certain segment of each country's population, and to note the international community's response, if any, to these crimes; and in making the analytic distinction between political culture and sovereignty, I wanted to draw attention to the relative influence that each concept contributed to the situations in which crimes against humanity occurred. One of the things that stands out in each case, and across all five cases, is the great complexity involved in attempting to articulate each concept and the weakness of relating contemporaneous historical events. Political culture is a concept borrowed from the field of comparative politics, and my efforts to apply the rigorous standards and practices of that field, I am certain, will fall short of what is expected. The analysis of sovereignty has a number of dimensions which I have not attempted to explore or have touched upon only slightly in these case studies, such as the role of the census in constructing social and ethnic identity, the physical construction and control of a country's infrastructure, and the role of print and electronic media in state legitimization. Finally, as I write this, events in Sudan are still unfolding, and

²⁹⁹ International Criminal Court, "ICC Prosecutor presents case against Sudanese President, Hassan Ahmad AL BASHIR, for genocide, crimes against humanity and war crimes in Darfur," ICC-OTP-20080714-PR341-ENG, July 14, 2008, <http://www.icc-cpi.int/press/pressreleases/406.html>, accessed 7/18/08

prosecutions for the various crimes committed in Argentina, Cambodia, Rwanda, and the former Yugoslavia are ongoing, so new information is still being added to the historical record. Thus, my efforts, of necessity, will remain incomplete.

That said, I want to now turn to a number of conclusions that may be drawn with the information and the concepts that I had available.

Political Culture and Identity

As the reader might have noticed throughout these case studies, the line between a country's political culture and the place of identity within sovereignty is not clear-cut. In fact, it is extremely difficult to separate the role of sovereignty in the enforcement of a country's national identity and the sense of identity that political culture creates. As I stated in an earlier chapter, sovereignty includes both a sense of belonging as well as the means of policing and defending the boundaries of belonging. It might be said that sovereignty is the "container" of political culture in most countries; this holds true for both long-established countries and former colonies. To use two examples, Cambodia's government in 1975 was controlled by a Communist regime which set out to eliminate "subversives", while in 1976 Argentina was controlled by a right-wing military junta that also wanted to eliminate "subversives;" their enemies largely came from the same sectors of the population: students, union members, the professional classes, intellectuals, and political opponents. Cambodia had a new revolutionary government that set out to defend itself from a set of class enemies and enforce a sense of identity and belonging in the process. The Argentinean tradition of military juntas in times of crisis allowed a

process to unfold in which the “essence” of national identity was perceived as threatened by leftist and Peronist enemies, creating the necessity for extreme measures.

At other times, crimes against humanity have occurred because of the failure or weakness of the nation’s existing political culture, followed by the rise of an alternative sense (or senses) of belonging in its place. This can be seen most clearly in Yugoslavia and to a lesser extent in Sudan. The political culture created by Tito in the former Yugoslavia (“brotherhood and unity”) sought to forge a national identity based on communist ideas of class that transcended the ethnic identities that made up the different regions of the country. After Tito’s death, the central government was no longer able to actively suppress expressions of ethnic identity. At the same time, Serbian nationalists began to see saw themselves as the successors and guarantors of the Yugoslavian nation. When the different republics began to demand their own independence from Serbian domination, civil war erupted in the region, which then degenerated into mutual instances of ethnic cleansing and mass murder. Sudan is a more ambiguous case, but traces of this problem can be seen there as well. The secular aims of the Nimiery regime began to weaken during the late 1970s and early 1980s; until that time, military coups were largely secular affairs, seeking to restore order and stability to a country with one of the most ethnically diverse populations on Earth. Islamist activists pressured the government, and by 1983, religious changes were taking place throughout the country in an effort to make Sudan into an Islamic state. This reignited the civil conflict with the southern region of the country, which resisted the sectarian state, and more deeply involved Sudan in ongoing wars with its neighbors Chad and Libya, which in turn destabilized the entire Darfur region.

Rwanda remains an interesting case in that categories of ethnicity dominated the politics of the post-colonial period (as they had during the colonial period, particularly under Belgian rule). The “Hutu Revolution” of 1960 was framed in the country as a triumph of majority rule, but one in which the minority Tutsi population was politically disenfranchised. The country’s weak economy led to dependency on development aid, which in turn fostered patronage-client networks throughout the country. By the late 1980s, the economy of Rwanda was once again weak, the Tutsi-led Rwandan Patriotic Front was ready to attack from Uganda, and there was pressure from the international community for democratization. This combination of social instability, civil war, and the growth of Hutu Power political parties contributed to renewed demonization of the Tutsi population and to the eventual genocide carried out against them.

In this light, political culture becomes a useful analytic tool for drawing attention to the ways in which a national identity is formed and to the institutions which sustain it. Political ideology drove the governments of Argentina and Cambodia to carry out crimes against humanity, but it is questionable whether these would have happened on a massive scale if the proponents of these ideologies did not have the means of state power at their disposal; if not, they might have remained vocal political movements carrying out isolated acts of violence, but nothing on the level of what actually happened in those countries. The initial tacit support of the people of Argentina for the junta in 1976 soon gave way to terror as they learned that the new government was engaged in mass arrests of neighbors and co-workers and encouraged people to spy on one another and to act as informants. The Khmer Rouge did, in fact, begin its regimentation of public and social life a few years before it seized governmental power in Cambodia in the regions of the

countryside under its control; communal living was enforced, and the people of these area became known as the “base people;” this would distinguish them from the “new people” who came under Khmer Rouge control only after central power was seized. “New people” were held to a higher standard of scrutiny, and in many cases, this led to their eventual murders. But until the Khmer Rouge actually gained control of most of the population, such murders were not common, even the midst of ongoing civil war against the government. Had the Argentinean junta remained only a plot in the minds of its instigators, had the plans of the Khmer Rouge remained only half-carried out within Cambodia, it does not seem as if we would have seen the high levels of torture and murder committed in these countries.

Ethnicity is a much more complex element of a country’s political culture. In the cases of Rwanda, Yugoslavia, and Sudan, ethnicity was a driving factor in the violence committed, but one can also see periods in the histories of those countries when ethnicity did not play a major role or was not considered a dominant factor in political life. Tito spent most of his life attempting to restrain expressions of ethnic identity within Yugoslavia, often in a brutal fashion, in the years following Tito’s death, ethnic conflict would prove to be Yugoslavia’s undoing as a unified country. Both in Rwanda and Sudan, the legacy of colonial rule left deep socio-economic and ethnic divisions within those countries, where one or more ethnic groups had been favored or had been ruled over separately. The subsequent histories of both countries have been largely defined by coming to terms with those divisions, largely through conflict. In these cases, ethnicity was the immediate cause of the atrocities committed, and the control of state sovereignty was both an object of conflict as well as the means of carrying out that conflict.

Sovereignty, Stability, and Civil War

Civil wars are, for the most part, fought within a country in order to either determine who will control the central government or to achieve autonomy for some group within the country; on the one hand, they are fought over sovereign control of the entire country, and on the other, they are attempts to gain some stake in the sovereign government or to achieve a measure of autonomous sovereign control for a group. Cambodia is an example of the former aspect of civil war, in which a faction within a country fights to gain control of the central government; the other countries are examples of the latter aspects. Leftists in Argentina sought to gain representation within the central government, and being barred from it by both the Peronist party and by the military, they turned to armed struggle. The republics of Croatia, Bosnia-Herzegovina, and Kosovo sought to establish independence from the dominance of Yugoslavian politics by Serbia. Tutsis born in exile created a military force in Uganda and invaded Rwanda, hoping to return to their homeland, to gain a measure of representation in the Rwandan government, and to topple the Hutu-dominated regime. Native tribes of the Darfur region rose up against the central government of Sudan in order to draw attention to how the region was being ignored.

In all of these cases, crimes against humanity were carried within a context of civil war: in Argentina, a number of leftist organizations were targeted as well as those suspected of being involved in anti-government activities, by the ruling military junta; in Cambodia, the Khmer Rouge acted to eliminate enemies of their regime once they took control of the capital city; in Yugoslavia, the break-away republics of Croatia and

Bosnia-Herzegovina fought with one another and with Serbia in order to establish their independence from the central government, and later, a group in Kosovo began an armed campaign for independence from Serbia; in Rwanda, the Hutu-controlled government set out to kill members of the Tutsi tribe, following a peace agreement which brought a halt to the civil conflict; and in Sudan, the government began employing air warfare and tribal militias to destroy tribal villages in the wake of an insurrection.

In three of these five cases, stability in the post-colonial period of independence was an issue: Cambodia, Rwanda, and Sudan. Deep social divisions and economic inequalities continued to exist within these countries following independence, eventually leading to political instability and civil war. Cambodia was largely rural and agricultural, and divisions existed between the majority of people living in villages in the countryside, wealthier merchants living in the cities, and the extravagant lifestyles of the monarch and his entourage; the Khmer Rouge was able to effectively exploit these divisions through both political and military struggle. For many decades in Rwanda, the Belgians favored the Tutsis over the Hutus; following independence, the “Hutu Revolution” reversed this at the political level, practically barring Tutsis from political participation, while Tutsis remained economically dominant. In Sudan, there remains the persistent control of the central government by peoples living in the northern sections of the country, to the exclusion of those living in the south and the west. In none of the cases did the former colonial masters attempt to right the economic and social inequalities before granting independence, nor did they attempt to intervene or mediate once problems began because of these issues. In fact, in these three cases, the colonial

masters contributed greatly to the exaggeration of these differences and divisions during the period of their rule.

The cases of Argentina and Yugoslavia take place outside of the post-colonial context. Both countries had been independent for most of the 20th century (with the exception of Yugoslavia prior to the First World War and during the Second World War, when it was under proxy control by Nazi Germany). Beginning in the 1930s, Argentina had developed the practice of allowing the military to seize control of the government during periods of political and social unrest, so the establishment of the junta in 1976, while not welcome by most citizens, was not an unusual occurrence. Yugoslavia experienced one-party, Stalinist-style rule after the Second World War while it remained relatively open to the rest of the world, unlike other communist nations with a similar form of government. The central governments in each of these case responded to civil and political unrest with extreme levels of violence; in the case of Yugoslavia, groups within the break-away republics also carried out a great part of the crimes against humanity.

The extreme measures taken to resolve the civil conflicts examined in these case studies point to a deep sense of insecurity and urgency on the parts of those who control the central governments. The rules of war no longer now no longer seemed to apply, since it was not two sovereign states fighting against one another, but rather two or more groups *within* a sovereign state vying for control of that state. The stakes were both political power and what political power enforces, the identity of the state itself. Civil wars are threats to the existence of a given central government's identity and existence, and this is why central governments have tended to respond with particular viciousness in

these cases; the unitary identity of the sovereign state is drawn into doubt with the existence of competing identities. As I showed in an earlier chapter, within modernity sovereignty always assume the form of a unitary body and a singular will, without exception; it is simply the nature of sovereign power to resist division within itself. Other examples of this tendency include the Thirty Years' War in early modern Europe, the American Civil War, the Russian Civil War following the First World War, and the presently ongoing conflict in the Democratic Republic of the Congo. Crimes against humanity on a large scale in these cases are an extension of civil conflict within a sovereign state.

Sovereignty and the Failure of Constitutional Order

In most Western nations, we take it for granted that a government will normally act within its constitutional limits, even in times of crisis or emergency, simply because, according to this line of thought, legitimate governments never violate their constitutions. Yet, after the 9/11 terrorist attacks, this has become an important issue in all countries with traditions of rights, limited government, and popular sovereignty, as governments have often been pressed constitutional restrictions to the limit, and in some cases, breaking those restrictions, in the pursuit of an elusive enemy. If we look back over the history of the second half of the 20th century, we can see how this has generally been the case – the Cold War, the war on drugs, and at present, the war on terror. These remained essentially low-level crises, and in the minds of some within the central government, they were authorized to do what was necessary in order to ensure that the threat, whatever it

happened to be at the time, was contained. Considerations of national security may then be used to override constitutional limits.³⁰⁰

What this situation in the West has in common with these case studies is the way in which sovereign authority reacts in times of crisis, or when the sovereign authority declares that a crisis exists and then responds to it. In both Argentina and Yugoslavia, there was a great deal of political instability in the time periods under examination here, without there being full-scale civil war at the beginning. Instead, dissident political movements sought to either show up the weaknesses of the central government (Argentina) or to secede from the country entirely (Yugoslavia). Within the theories of sovereignty examined earlier, a common thread running through them all is that governments exist primarily to provide security, to protect citizens from both internal and external threats. Theories of popular sovereignty take this a step further and allows for citizens to rebel against unjust governments. However, as I have also showed, neither set of theories provides a clear set of conditions under which this might legitimately take place. Resistance to unjust government remains under-theorized within the compass of sovereignty, and this has allowed central governments to essentially categorize any armed opposition, legitimate or not, as threats to the existence of the sovereign authority itself.

This same tendency within central governments also shows up in situations where a group seizes power within the government, effectively suspending an existing constitutional order and ruling by decree or creating another constitution for the state. While the ruling group is in power, opposition and dissent are often silenced and, in the cases examined here, they become the objects of violent repression and outright murder.

³⁰⁰ for a more in-depth discussion of this aspect of sovereignty, see Giorgio Agamben, *State of Exception* (Chicago: University of Chicago Press, 2005)

This happened in Cambodia when the Khmer Rouge seized power and to a lesser extent when the National Islamic Front carried out its coup in 1989 in Sudan. In Cambodia, the Khmer Rouge banned all opposition parties, while in Sudan, popular elections were eventually reinstated, though with substantial restrictions.

Rwanda and Yugoslavia are interesting cases because the mass murders committed were tied to broader movements within those countries towards greater democratization following the end of the Cold War. The prospects of greater popular participation in the central government, the desire to oust oppressive political parties from the past, and the international pressure to democratize the political process, were all influential factors in this trend. The proliferation of political parties and popular movements in these two countries after 1989 was in part based on the centrality of ethnic identity in ongoing political debates. The divisiveness and win-lose mentality created by this issue eventually led to the rise of parties in power that established the dominance of one ethnic group (Hutus, Serbians) at the expense of others, effectively disenfranchising those other ethnic groups that sought representation. In Rwanda, Tutsis were barred from holding higher political office prior to the 1990s, but the invasion by the RPF and eventual stalemate between the RPF and the Habyarimana government led to negotiations which would have returned political rights to the Tutsi people. These events aided the rise of the Hutu Power movement within the nascent democratic reforms within Rwanda, and it eventually seized power by force and carried out the genocide against the Tutsi. Slobodan Milosevic's "anti-bureaucratic revolution" was presented as a popular movement to ouster Communist Party *apparatchiks* from power after the fall of the Berlin Wall, but its true intent was to allow the province of Serbia to have dominance

within the rotating presidency of the country. When the republics of Croatia, Bosnia-Herzegovina, and eventually Kosovo attempted to break away from Yugoslavia and achieve independence, conflict between these republics and Serbia began. In the name of holding together the “southern Slavic” nation, numerous acts of violence were carried out by Serbian nationalists, both in the Serbian government and by Serbians within Croatia, Bosnia-Herzegovina, and Kosovo; Croatian nationalists also committed atrocities against Bosnia-Herzegovina. In both of these countries, ethnic identities were already writ large into political life, and movements toward democracy exacerbated these conflicts to extremely violent proportions. These were places that turned ethnic identity into a distinct political interest group and in which political power was ultimately conceived of as a zero-sum game that undermined the goals of democratic reforms and an orderly and non-violent political process.

A final aspect of the failure of constitutional order to which I would like to draw attention is the awareness of culpability on the part of those who committed crimes against humanity. In all of these cases, various measures were taken to cover up instances of rape, torture, and mass murder committed by the central authorities. Secret prisons are a common way to hide this grim handiwork (Argentina, Cambodia, and Sudan) as is the use of mass graves in uninhabited areas (Cambodia, Yugoslavia). In conditions of civil conflict, central governments tend to assume control over the main channels of the public media, or bars media access to areas of conflict; in many instances, the conflict itself effectively bars members of the media from reporting the conditions on the ground. Central governments also resort to using proxy armies and privately-controlled militias to carry out their handiwork, creating a veil of impunity. Average

citizens, including children, were actively pressed into service for the Khmer Rouge. Militias have been used to deadly effect in Yugoslavia, Rwanda, and Sudan, with the advantage of allowing these central governments to maintain the appearance of non-involvement.

Rwanda remains an interesting exception to this last point. Both within the country and to outside observers, there was an awareness of a great deal of unrest within the country, and the country's only radio station was regularly using propaganda to turn the population against the Tutsi people; while the genocide was being carried out, public radio broadcasts became a source of coordination for members of the *Interahamwe* as they went about their "work." Once the genocide began, no effort was made to cover up the murders that were being committed; bodies often lay on the roadsides for weeks before being carried away.

It is this last point to which I want to draw the reader's attention. The horrific events that took place in Yugoslavia and Rwanda, and that are ongoing in Sudan, all happened in full view of the world. Newspaper and television reporters were on the ground in these regions and gave day-to-day accounts of these events as they unfolded. The advent of twenty-four hour-a-day television news has been a blessing and a curse, in this respect. The world viewing public was able to witness atrocities being committed, often first-hand, but as time passed, attention to and concern over what was happening in these countries flagged. The civil war in the former Yugoslavia dragged on from 1991 to 1995, and again in 1999. The events in Rwanda took place over the course of a several months in 1994. And the world has been aware of the atrocities being committed in the Darfur region of Sudan since the summer of 2003. This is in direct contrast to the crimes

against humanity that took place in Argentina, which at the time was viewed as just another military coup, and in Cambodia, where the media was only allowed very limited access; it was only in the early 1980s that the public became aware of what happened in these two countries.

This raises some very difficult questions about sovereign authority and how to deal with massive crimes against humanity committed by a central government. Within Western theories of sovereignty, it is assumed that authorities are accountable (to natural and divine law or to the people) and subject to the rule of law (members of government are held responsible for their actions under their own legal system), but if one looks at the history of sovereign authority, this assumption is not iron-clad; it may even be incorrect. Who can hold murderous sovereign authorities accountable when they themselves hold a monopoly on the means of violence? How may they be held accountable if they subvert the political process and the very institutions of public life? Can a government have a duly constituted authority if it does not respect basic human rights?

Oftentimes, citizens have been unable to act against their own governments when that government is responsible for committing abuses of human rights, and it has fallen to the international community to respond to these crimes. The rise of various human rights regimes under the auspices of the United Nations and regional organizations points to some level of commitment on the part of the international community that these violent actions by governments can violate basic norms of treatment of human persons.

Although the idea of humanitarian intervention was already current by the early 1990s, in large part due to the situation in Somalia, it gained greater currency after the mass murders that took place in Rwanda and Yugoslavia. In Kosovo, "NATO was acting upon

a new premise that had emerged during the conflicts in Bosnia and Croatia. Military intervention against sovereign states, so this embryonic doctrine proclaimed, is legitimate if it prevents or halts the abuse of human rights by a state against its own citizens . . . Humanitarian conditions alone justify war.”³⁰¹ NATO’s willingness to act was also emboldened by the criminal tribunals going on against the former Yugoslavia and Rwanda as well as the Spanish government’s attempt to bring former Chilean dictator Auguste Pinochet to trial around the same time. Subsequently, this doctrine was further developed into the form of “responsibility to protect,” which will be discussed in the next chapter.

Impunity for crimes against humanity, under the concept of “sovereign immunity,” has also been under legal assault through a number of venues around the world. Ad hoc tribunals were created by the United Nations in the wake of the atrocities committed in Rwanda and Yugoslavia. A quasi-international tribunal was also created to deal with crimes committed during the Khmer Rouge regime in Cambodia. Following a change of government, a number of civil and criminal trials began in the late 1990s in Argentina to deal with crimes committed during the 1976-1983 *junta*. By July 2002, the International Criminal Court began to operate, and as of this writing, six cases are before the court, dealing with situations in the Democratic Republic of the Congo, Uganda, the Central African Republic, and Sudan; the Prosecutor has also recently asked for an arrest warrant against the President of Sudan, Omar el-Beshir, and international debate has ensued over its viability while peace negotiations are ongoing in the conflict in Darfur.

³⁰¹ Misha Glenny, *The Balkans: National, War, and the Great Powers: 1804-1999*, (New York: Penguin, 2001), 659-660

Finally, in the years following the Cold War, international pressure for democratization has grown. The demise of Soviet communism and its system of one-party rule opened the way for the spread of Western-style democracy around the globe. But as I have shown above, democratization contributed to the exacerbation of existing political and ethnic tensions within Yugoslavia and Rwanda. Furthermore, the imposition of the culturally-bound Western democratic institutions upon non-Western contexts has some problems in its implementation. Democratization by force or by external pressure may do more harm than good in the long run for the cause of democracy around the world.

These three themes, humanitarian military intervention, the role of the International Criminal Court, and the process of democratization will be explored in more depth in the next chapter. These case studies have showed that, in the latter decades of the 20th century and the opening years of the 21st century, crimes against humanity remain an ever-present possibility, requiring the need for a range of effective international responses. Sovereign authority, originally created to hold threats to a population at bay, in all of these cases has been the greatest source of threat to a population's well-being and existence.

CHAPTER 5
TAMING LEVIATHAN?

Introduction

In December 2001, the International Commission on Intervention and State Sovereignty, sponsored by the Canadian government, issued its report entitled *Responsibility to Protect*, which set out to reformulate the concept of state sovereignty with an eye toward determining under what circumstances humanitarian intervention was justified. In the contemporary world, sovereign authority is no longer synonymous with mere “control” over a population and territory but rather exists to protect its population. By becoming a signatory to the United Nations’ Charter, a state “accepts the responsibilities of membership flowing from that signature.” The authors of the report go on to define a state’s responsibility as three-fold: care for the security and well-being of its citizens; an obligation to all the world’s citizens through UN membership; and accountability to the international community of states for its actions.³⁰² This redefinition of sovereignty was incorporated into the United Nations’ human security agenda in the 2004 report *A More Secure World: Our Shared Responsibility*.³⁰³

This effort to re-craft the concept of sovereignty indicates the degree to which it is perceived at the international level that the authority of the sovereign state remains a problem in pursuing the goals of promoting human rights and development and providing

³⁰² International Commission on Intervention and State Sovereignty, *The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty* (Ottawa: International Development Research Centre, 2001), p. 13

³⁰³ (New York: UN Department of Public Information, 2004), <http://www.un.org/secureworld/report3.pdf>

for the security needs of people in areas of political instability and conflict. As I showed in the above case studies, the major incidents of crimes against humanity in the 20th century have occurred during civil conflicts within states and that the state authority itself was complicit in those crimes. Are there ways in which the power and authority of a sovereign state may be curbed which may prevent the further occurrence of large-scale crimes against humanity?

This chapter will explore three possible solutions to this nagging problem of sovereign authority: humanitarian military intervention; the establishment of the International Criminal Court (ICC); and the process of democratization. At this point in history, humanitarian intervention, or military intervention for humanitarian purposes, appears to be the world community's primary instrument of dealing with ongoing crimes against humanity. Despite the development of its legitimacy in the international community, much controversy surrounds this principle of intervention. The establishment of the ICC has been greeted by the majority of nations as a great advancement in the ability to try crimes against humanity without ambiguity and undue political influence, but many questions remain as to its efficacy, especially without the support of the United States. Finally, the international promotion of democratization is a more ambitious goal - the spread of democratic institutions of government around the world in order to achieve a deep-rooted respect for human rights within states. This seemingly worthy goal is not without its problems and criticisms: claims of imperialism; a lack of respect for alternative modes of authority and cultural differences; the difficulties of grafting Western political ideas onto non-Western political institutions; and

the cost of democratic nation-building would be extremely prohibitive to the West and to the entire community of nations.

Given these alternatives (by no means the only ones³⁰⁴), it would seem as if the authority of the sovereign state might be brought into line with the rules established by international law and human rights norms. However, in all of these solutions, sovereignty remains the central organizing principle of action. Humanitarian military intervention brings other sovereign states to the rescue of a given population, but then the problem becomes how to insure that those people will be protected, once the other states withdraw, indeed, if they are able to withdraw. The International Criminal Court has the potential to hold leaders of states accountable for crimes against humanity committed under their rule, but without enforcement powers beyond what is granted to it by the United Nations or voluntarily by states party to the ICC statute, its rulings remain hollow. And democratization seeks to spread the “blessings of freedom” throughout the world while recreating the pole of popular sovereignty introduced in the first chapter of this dissertation. In the end, sovereignty remains inherently paradoxical, absorbing all of these solutions into its orbit without mitigation of its more troublesome aspects.

Humanitarian Intervention

While the term “intervention” covers a wide variety of meanings in the field of international relations³⁰⁵, *humanitarian military* intervention can be defined as the use of

³⁰⁴ For example, the existence of regional human rights institutions and the interdependencies of the global economy.

³⁰⁵ For various uses of the term intervention, see Gene Lyons and Michael Mastanduno, *Beyond Westphalia? State sovereignty and International Intervention*, ed. Gene Lyons and Michael Mastanduno

armed force by a nation or nations to stop wide-spread human rights abuses within the sovereign territory of another nation.³⁰⁶

On its face, the legality of military intervention into the domestic affairs of another nation seems straightforward. The United Nations Charter specifically prohibits such intervention - "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations."³⁰⁷ This sentiment is subsequently reiterated in Chapter 2, Section 7, but with a single proviso. "Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII."³⁰⁸ Given the importance of the status of sovereign statehood to the U.N. Charter, the centrality of non-interference is obvious. The domestic affairs of a member state of the United Nations remain essentially under the authority of that state's government.

However, intervention remains an option under conditions of threats to international peace and order. Chapter VII of the Charter lays out a process by which the U. N. Security Council may authorize the use of force to resolve international conflicts. "Should the Security Council consider that measures provided for in Article 41 would be

(Baltimore: Johns Hopkins University Press, 1995) and Nicholas Mills and Kira Brunner, ed., *The New Killing Fields: Massacre and the Politics of Humanitarian Intervention* (Basic Books: New York, 2003)

³⁰⁶ Col. Daniel Rice and Col. John Dehn, "Armed Humanitarian Intervention and International Law: A Primer for Military Professionals," *Military Review*, November-December 2007, p. 38

³⁰⁷ Charter of the United Nations, Chapter 2, Section 4, <http://www.un.org/aboutun/charter/index.html> accessed 3-1-08

³⁰⁸ *ibid.*

inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.”³⁰⁹ Article 51 describes a nation’s right to self-defense. “Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.”³¹⁰

The issue of domestic crises, such as civil war, state failure, internal repression, and crimes perpetrated by a government against its own citizens, thus remains outside of the scope of the UN Charter. Subsequent international treaties have defined a general opposition to genocide, war crimes, and crimes against humanity, but the prevention and punishment of these offenses remained elusive until the 1990s.

With the growing number of humanitarian crises in the 1990s and 2000s, military intervention was often cited as the most useful policy tool in preventing the further abuse of human rights and loss of life.³¹¹ But the experience of the Western nations that bore the brunt of these interventions was mixed. In a few instances, there was some success –

³⁰⁹ *ibid.*; Article 41 discusses measures short of direct military action.

³¹⁰ *ibid.*

³¹¹ David Rieff, *At the Point of a Gun: Democratic Dreams and Armed Intervention* (New York: Simon and Schuster, 2005), p. 3-4

Kosovo, East Timor, Sierra Leone – but in others, there was a marked lack of success – Somalia, Rwanda, the former Yugoslavia, and some would say, Iraq after the 2003 invasion – for a variety of reasons, including a lack of commitment.

Growing out of former UN Secretary General Kofi Annan’s Millenium Report in September 2000, the Canadian government sponsored a study of sovereignty and the role of intervention in the 21st century and issued the above-mentioned report *The Responsibility to Protect* in December 2001. This study reconceptualized state sovereignty as a “responsibility to protect” the population under the state’s jurisdiction. The committee that undertook the study also proposed criteria for determining when that responsibility had lapsed and how and to what extent other nations may intervene, to continue protecting that population once the state is unwilling or unable to do so.

While the doctrine of “responsibility to protect” (R2P) is now a part of the United Nations’ approach in dealing with large-scale crimes against humanity, problems remain. The 2003 American invasion of Iraq was partly justified on the grounds that President Hussein was engaged in actively repressing and murdering his own citizens.³¹² Although this aspect of the invasion was overshadowed by the alleged connection between Hussein’s government and the Al-Qaeda terrorist organization and Hussein’s alleged possession of biological and chemical weapons, it has not ceased to be a justification for the invasion and occupation of Iraq. The United Nations/African Union peace-keeping mission in Darfur was the first such mission explicitly deployed under R2P,³¹³ but as of

³¹² 107th Congress, Authorization for Use of Military Force against Iraq Resolution of 2002, http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_cong_public_laws&docid=f:publ243.107 accessed 9/10/08

³¹³ UN Security Council, Resolution 1706 (2006), S/RES/1706 (2006), <http://daccessdds.un.org/doc/UNDOC/GEN/N06/484/64/PDF/N0648464.pdf?OpenElement> accessed 9/10/08

September 2008, two years have passed, and the mission still remains undermanned and under-equipped; even the peace-keepers themselves have come under attack from rebel forces in the region. There is a marked lack of political and economic interest in the Darfur region for most Western nations, while the opposite is true for Middle Eastern and African nations and China. National political interest plays an enormous role in determining where and how R2P is applied, which undermines its humanitarian intent. Despite having a well-developed set of guidelines for determining in what situations to intervene, the lack of political will or the willingness to misuse the R2P always exists.

R2P seeks to ultimately restore sovereignty to the afflicted country. The question arises regarding the nature of sovereignty during intervention. “Intervention suspends sovereignty claims to the extent that good governance – as well as peace and stability – cannot be promoted or restored unless the intervener has authority over a territory. But the suspension of the exercise of sovereignty is only *de facto* for the period of the intervention and follow-up, and not *de jure*.”³¹⁴ What is the purpose of *de jure* sovereignty while a country is occupied by foreign military forces? And if a government has sought to carry out large-scale murder and ethnic cleansing, how can it be trusted to not do so once foreign military forces withdraw, especially if the doctrine states that “[t]he objective overall is not to change constitutional arrangements, but to protect them . . . military intervention means endeavouring to sustain forms of government compatible with the sovereignty of the state in which the enforcement has occurred – not undermining that sovereignty.”³¹⁵ These statements reflect the underlying assumption that sovereignty, or more specifically, sovereign power, lies in military and

³¹⁴ International Commission on Intervention and State Sovereignty, 44

³¹⁵ *ibid.*, 44

police force, and that questions of authority and legitimacy can be answered only after security is established. Thus, sovereignty does not reside in what the state provides, but what it is capable of doing, its potential for violence, or its enforcement ability. While sovereign authority can be democratic and can be used for humanitarian ends, it is not in itself democratic or humanitarian. A sword, a rifle, and a nuclear bomb are neither democratic nor humanitarian.

The International Criminal Court

The idea of having an international court to try individuals for crimes that “shock the conscience” of humanity emerged after the end of World War II, following the war crimes tribunals in Germany and Tokyo and the adoption of the Genocide Convention in 1947. The UN General Assembly sought to go about creating a judicial institution to try the crime of genocide, and the task was given to the International Law Commission. From 1949 to 1954, this commission a number of draft statutes for an international criminal court, but these were subsequently rejected as the Cold War took center stage. In the mid 1980s, Soviet President Mikhail Gorbachev suggested trying cases of terrorism in front of an international court. In 1989, the country of Trinidad and Tobago sent a request to the General Assembly to resume work on an international criminal court which would have jurisdiction over drug trafficking. This, combined with the establishment of ad hoc war crimes tribunal in the former Yugoslavia³¹⁶ and the efforts of

³¹⁶ Geoffrey Robertson, *Crimes against Humanity: The Struggle for Global Justice* 3rd ed. (New York: New Press, 2006), 420

the Vienna Declaration and Programme of Action³¹⁷ (dealing with human rights issues), led to further work by the ILC on a draft statute. Differences over the statute were ironed out from 1994 until 1998. In July 1998, the Rome Statute was adopted by a vote of 120 to 7.³¹⁸ It was ratified by the required 60 states in April 2002, and the statute entered into force in July of the same year. As of this writing (2008), the International Criminal Court (ICC) is investigating of four international situations: Uganda, the Democratic Republic of the Congo, the Central African Republic, and Sudan.

Under the Rome Statute, the court's jurisdiction extends over four categories of crime: genocide, crimes against humanity, war crimes, and aggression. The jurisdiction of the court is specifically designed to be *complementary*, to allow national courts to try cases concerning these crimes within their own legal systems, unless they are unable or unwilling to do so.³¹⁹ There are territorial limitations to the court's jurisdiction; the accused individual has to be a national of a state party to the statute, and the alleged crime has to have been committed on the territory of a state party.³²⁰ Third, there are temporal limitations to the court's jurisdiction. It has jurisdiction only over crimes committed after July 1, 2002, the date the Rome Statute took effect.³²¹ Jurisdiction begins to be exercised whenever a situation is referred to the office of the prosecutor of the court by a state party or by the UN Security Council or is initiated by the office of the prosecutor itself.³²²

³¹⁷ Paul Kennedy, *The Parliament of Man: The Past, Present, and Future of the United Nations*. (New York: Vintage Press, 2007), 197

³¹⁸ The seven votes against the statute came from the United States, the People's Republic of China, Iraq, Israel, Libya, Qatar, and Yemen.

³¹⁹ International Criminal Court, Article 1, Rome Statute of the International Criminal Court, http://www.icc-cpi.int/library/about/officialjournal/Rome_Statute_English.pdf, accessed 2-12-08.

³²⁰ *ibid.*, Article 12

³²¹ *ibid.*, Article 11

³²² *ibid.*, Article 13

The trial process within the ICC proceeds through the office of the Prosecutor. Once a situation has been referred to or taken up by the Prosecutor, the office undertakes an evaluation of the matter, something along the lines of a fact-finding mission. Once the Prosecutor thinks there is a reasonable basis for a case, the office then submits a request for authorization of an investigation from the Pre-Trial Chamber of the Court.³²³ The Pre-Trial Chamber is one of the organs of the Court, composed of at least six judges, and it acts to assist both the Prosecutor and defense in preparation for the case, authorizing investigations for the Prosecutor, issuing arrest warrants and summons to appear, and providing assistance to victims, witnesses and defendants.³²⁴ Actual trials are conducted by the Trial Chamber (also a panel of not less than six judges), and crimes are tried at the Hague (unless another location is chosen), and the accused must be present. The rights of the accused are extensive, comparable with those of any Western nations and embedded in many human rights treaties.³²⁵ Rules of evidence and procedure are already laid down in agreements subsequent to the Rome Statute,³²⁶ and before a trial begins, relevant rules are discussed by the Trial Chamber, Prosecutor and defense before they are implemented in a given trial.³²⁷

How will the ICC affect state sovereignty? It is important to look back to past international criminal trials, beginning with Nuremberg and Tokyo and the ongoing tribunals in Cambodia, the former Yugoslavia, and Rwanda. Eliminating the possibility of impunity for war crimes and crimes against humanity perhaps might act as a deterrent

³²³ *ibid.*, Article 15

³²⁴ *ibid.*, Article 57

³²⁵ *ibid.*, Article 67

³²⁶ International Criminal Court. Rules of Procedure and Evidence, ICC-ASP/1/3 (part II-A), http://www.icc-cpi.int/library/about/officialjournal/Rules_of_procedure_and_Evidence_English.pdf, accessed 2-12-08

³²⁷ International Criminal Court. Article 64, paragraph 9, Rome Statute of the International Criminal Court, http://www.icc-cpi.int/library/about/officialjournal/Rome_Statute_English.pdf, accessed 2-12-08

against the commission of future crimes. This is not like domestic crime, which is commonplace and in which many factors play into its occurrence;³²⁸ these are widespread and publicized crimes carried out by a government against people within its own borders. This may force political leaders in the future contemplating committing such crimes to temper their methods and perhaps their political objectives (or alternately, to better hide their efforts).

Does the Rome Statute actually impugn upon state sovereignty? No and yes – it is an international agreement, based upon voluntary participation, and it exists to try crimes of an extraordinary nature, in situations where national governments are either unable or unwilling to try them. It also provides a forum for cases which are within the concern of the international community. Similar to R2P’s role as a supplement to a nation’s own sovereign authority, the ICC’s jurisdiction augments that of national legal systems. But, it does undermine sovereign authority by applying international law to domestic situations and by holding a political and military leadership accountable for crimes they commit.³²⁹ Further, it establishes a judicial process outside of an offending state’s territory and holds nationals accountable to the community of states.

Countries with political cultures with a strong tradition of impunity for violence perpetrated against their own citizens will reject the notion of the ICC and its jurisdiction altogether, although the UN Security Council retains the power of referring situations to the office of the Prosecutor which occur in nations which are not signatories to the

³²⁸ Mark Drumbl makes this argument in the first chapter of his book *Atrocity, Punishment, and International Law* (New York: Cambridge University Press, 2007)

³²⁹ The ICC statute applies not only to the leaders of national governments, but to any individual implicated in crimes against humanity. The current situations under investigation within the ICC now include crimes committed by rebel leadership in Uganda, the Central African Republic, and the Democratic Republic of the Congo

treaty.³³⁰ Interestingly enough, one of the strongest and most vocal opponents of the ICC has been the United States. Initially supportive of the idea of the ICC, the American delegates to the conference on the Rome Statute eventually came to oppose the idea altogether, though they remained involved in the negotiations in order to have a hand in what the final shape of the court and its powers would be. Their resistance centered around the fear that American, particularly soldiers, would be harassed and tried by the court for frivolous causes. This resistance hardened after the 2000 election, turning into outright defiance after the terror attacks in 2001. In May 2002, former UN Ambassador John Bolton described the “un-signing” of the Rome Statute as “the happiest moment” of his time at the State Department.³³¹ Bolton accused the ICC of having “an unaccountable prosecutor, possibly politically motivated, [and] posing grave risks for the United States and its political and military leaders.”³³² Afterwards, the United States began pursuing a campaign to get other countries to sign bilateral agreements to *not* turn Americans over to ICC custody, under Article 98 of the Rome Statute.³³³ Later that same year, the U.S. Congress passed the American Servicemember Protection Act, which set up a number of prohibitions regarding participation in the ICC and which threatened to cut military aid to countries party to the Rome Statute unless they signed the Article 98 agreements.³³⁴

³³⁰ International Criminal Court. Article 13, Rome Statute of the International Criminal Court http://www.icc-cpi.int/library/about/officialjournal/Rome_Statute_English.pdf; see also Robertson, 442-443

³³¹ John R. Bolton. *Surrender Is Not an Option: Defending America at the United Nations and Abroad* (New York: Threshold Editions, 2007), 88

³³² *ibid*, 85

³³³ Article 98 of the Rome Statute, paragraph 2, states that the Court may not request that an individual be surrendered if it would violate the international agreements of the State party of which the request is being made.

³³⁴ I cannot help but think that this extensive overreaction to the ICC was motivated in part by the creation of the detention facility at Guantanamo Bay in January 2002. There had to be some awareness at the highest level of the U. S. government that what was going to take place there was, from the point of view of international human rights law, at the very least questionable.

The lengths to which the American government has gone to extricate itself from the reach of the ICC are instructive. And in relation to this, it should also be noted that neither Russia nor China are parties to the Rome Statute. The world's superpowers do not view themselves as being subject to the universal jurisdiction of the Rome Statute, and by implication, to the community of states. Further research might look at the historical record of how these nations have responded to international efforts at creating and enforcing human rights and human security measures in the 20th century, but here, I only want to note that their present actions seem to indicate that, because of their material power, they simply view themselves as being "above the law" embodied in the Rome Statute. This puts them in good company with Syria, Iran, Sudan, and North Korea, nations which have been labeled by the United States as a part of the "Axis of Evil" and which are also not signatories of the Statute. It remains to be seen how the ICC will be able to operate effectively without some level of cooperation from prominent members of the UN Security Council.

Democratization

The process of democratization is the transition from authoritarian forms of government toward more democratic forms. Here, democracy is broadly defined as a form of government in which people periodically elect their officials and are able to enjoy protection of their human rights. In the contemporary world, democracy has come to be synonymous with representative or parliamentary institutions as well as the enjoyment of a range of political, civil, social, and economic rights. Throughout this

dissertation, I have deliberately avoided using the term democracy to describe popular sovereignty simply because its early modern proponents of popular sovereignty were themselves not supporters of democratic government as they historically understood its existence in ancient Greece. The value and shape of democracy has changed over time, and it remains an evolving concept. “Democracy is an ephemeral phenomenon rather than a settled system. We might think of it as protean and amorphous, embracing a wide range of possible forms and mutations that are responsive to grievances on the part of those who have no means of redress other than to risk collectivizing their small bits of power.”³³⁵

Within the United Nations, a commitment to democratic forms of governance has existed since its inception; Article 21 of the Universal Declaration of Human Rights makes direct reference to the participation of people in their governments, the will of the people as the basis for government’s authority, and the need for periodic elections to insure that this will is genuinely expressed.³³⁶ This commitment has shown up time and again, from the Covenant on Civil and Rights in 1966,³³⁷ to the Millennium Declaration in 2000,³³⁸ Secretary-General Kofi Annan’s follow-up report to the 2005 Millennium Summit,³³⁹ and the establishment of the United Nation’s Democracy Fund, also in 2005.³⁴⁰

³³⁵ Sheldon Wolin, *Politics and Vision: Continuity and Innovation in Western Political Thought*, expanded edition (Princeton: Princeton University Press, 2004), p. 602

³³⁶ <http://www.un.org/Overview/rights.html>, accessed 9/12/08

³³⁷ Article 25, <http://www2.ohchr.org/english/law/ccpr.htm>, accessed 9/12/08

³³⁸ United Nations. General Assembly Resolution 55/2. United Nations Millenium Declaration A/RES/55/2 <http://www.un.org/millennium/declaration/ares552e.pdf> , accessed 12/28/08, 2

³³⁹ A/59/2005, “In Larger Freedom: Towards Development, Freedom, and Security for All,” <http://daccessdds.un.org/doc/UNDOC/GEN/N05/270/78/PDF/N0527078.pdf?OpenElement>, accessed 9/12/08, pp. 38-39

³⁴⁰ see <http://www.un.org/democracyfund/index.htm>, accessed 9/12/08

Studies of democratization in recent years have shown that an increasing number of nations have begun to adopt democratic institutions and practices, particularly since the end of the Cold War. Samuel Huntington's seminal *The Third Wave* (1991) identified two "bursts" of democratization occurring after 1974, one following the democratization of Portugal and Spain, and another following the collapse of communism in Eastern Europe and the fall of the Soviet Union.³⁴¹ By 2008, some 94 countries could be classified as democracies, prompting Marshall and Cole to remark that "for the first time in human history, the world has become a predominantly democratic one, at the global level."³⁴²

It would seem intuitive that the growth of democratic institutions in a country would inhibit the excesses of authoritarian governments, and for the most part, that seems to be the case. However, in two of the case studies examined here, in the former Yugoslavia and Rwanda, the attempt to build democratic institutions actually *preceded* the occurrence of crimes against humanity. The removal of authoritarian constraints on potential conflicts between ethnic differences in these two countries was one cause of the rise of exclusionist policies on the part of political authorities. The attempts of Croatia, Bosnia-Herzegovina, and Kosovo to secede from the former Yugoslavia led to civil conflict with the Serbian-dominated central government. In Rwanda, pressure from the international community was one of the factors which encouraged the rise of the Hutu Power movement which had a central role in the genocide carried out against the Tutsi people. Following the American invasion of Iraq in 2003, the establishment of a

³⁴¹ discussed in Larry May, *The Spirit of Democracy: The Struggle to Build Free Societies throughout The World* (New York: Times Books/Henry Holt and Company, 2008)

³⁴² Monty G. Marshall and Benjamin R. Cole, *Global Report on Conflict, Governance and State Fragility 2008*, <http://www.systemicpeace.org/Global%20Report%202008.pdf> p.5-6, accessed 9/14/08

democratic constitution created conditions in which a number of militant groups took advantage of more open public institutions to instigate terror and civil conflict throughout the country. In late 2007 and early 2008, an outbreak of violence in Kenya during contested national elections led to fears that the tribal loyalties of the two main political parties would lead to large-scale ethnic conflict; swift diplomatic intervention by the United Nations and the international community helped lead to the creation of a coalition government and a defusing of violence.³⁴³ Democratic government, particularly relatively young institutions, remains susceptible to this sort of violence.

The “third wave” of democratization describes cascades of transitions from authoritarian regimes to democratic institutions following the fall of the Berlin Wall in 1989, but it does not touch upon the difficulties of encouraging democratic transitions in countries with well-entrenched authoritarian governments. This is especially relevant in considering the on-going conflict in the Darfur region of Sudan; the prospects of encouraging more democratic reforms within that country do not seem promising at this point in time. The same is true in countries with authoritarian governments such as China, North Korea, Syria, and Zimbabwe. Democratization remains a contingent and haphazard process, and the willingness of the international community to more firmly encourage democratic reforms in deeply entrenched authoritarian governments seems limited at this point in history.

³⁴³ Associated Press. “Kenya’s rival politicians reach an agreement,” *International Herald Tribune*, February 28, 2008 <http://www.iht.com/articles/ap/2008/02/28/africa/AF-GEN-Kenya-Election-Violence.php>, accessed 9/14/08

Conclusion

While humanitarian military intervention, the International Criminal Court, and the process of democratization all place constraints on the exercise of sovereignty, they do not affect sovereignty in substance. Most nations in the international community have agreed to abide by human rights norms, and there are mechanisms in place for enforcement, punishment, and the prevention of abuses, but these remain voluntary and contingent upon state participation. Sovereign states remain in charge of the process. Humanitarian intervention, now in the form of the Responsibility to Protect, and the International Criminal Court has been legitimated by collective decision-making within the international community.³⁴⁴ Democratization, although regarded as a worthy goal upon by most nations, remains more ambiguous and problematic in its implications. And rarely will all of these measures be implemented with pure motives; as long as sovereign states make the policy, there will be considerations of national interest, strategic thinking, and suspicion of the motives of other nations.

Prevention and prosecution of crimes against humanity are going to take a commitment on the part of nations to priorities other than that of national self-interest, which remains the basis of most foreign policy making. At the very least, it requires a willingness to intervene in the domestic affairs of other nation-states. At another level, it requires a willingness to put a nation's own military in harm's way in defense of a population other than one's own. Efforts to put a halt to situations such as ethnic cleansing and large-scale instances of violence and mass murder would have to be

³⁴⁴ United Nations, Department of Public Information. "Secretary General Defends, Clarifies 'Responsibility to Protect' as Berlin Event on 'Responsible Sovereignty: International Cooperation for a Changed World,'" SG/SM/11701 <http://www.un.org/News/Press/docs/2008/sgsm11701.doc.htm> accessed 12/28/08

undertaken quickly, without necessarily having recourse to past processes of international debate in the UN General Assembly and Security, such as what occurred during the Rwandan genocide and the present conflict in Sudan. The International Criminal Court is still in the early years of its institutional life, and it remains to be seen if the indictment handed down by the Prosecutor Ocampo against President El-Bashir of Sudan will have any effect on the ongoing conflict in that country. Finally, while there is a great deal of rhetorical commitment to democratization at the international level and some amount of institutional support, the democratizing project remains ambitious and uncertain at this point in world history. The question remains: will the world's nations be able to sustain these commitments in a consistent fashion over the coming decades? If so, then the abuses of sovereign authority have a good chance of being curbed, but if not, then the prospects for these abuses to continue remains.

CHAPTER 6

CONCLUSION

The sovereign authority of the state remains intact in the first decade of the 21st century. In this dissertation, I wanted to examine how sovereignty came to exist, both as a concept and in historical practice. The idea of sovereignty emerged from the transition from the feudal era of European history to modernity, as a characterization of the power of the monarchical state. The constitutional revolutions of the 17th and 18th centuries transferred sovereign authority away from the king into the hands of the people. First through colonial expansion, then through the creation of the United Nations and decolonization in the 20th century, sovereign statehood became the dominant model of political organization across the globe.

Despite practical, constitutional, and even metaphysical limits placed upon the exercise of sovereign authority, all theories of sovereignty maintain that no one should be able to limit the power of the sovereign authority in times of emergency or when facing a threat to the existence of the country; accountability, whether in the form of adherence to natural or divine law, or to the will of the people, is suspended for the purposes of quick decision-making and the circumventing of laws and constitutional limits which would prevent the necessary exercise of power. The locus of sovereignty suddenly moves away from its original source to decision-makers within government. It is in through this “loophole” that danger enters into the national community, because if none may resist, or is able to resist, the demands of the sovereign authority in times of crisis, then no member of the state remains safe from the government, and the protection of basic human rights

and dignity cannot be guaranteed. In the case studies of Cambodia, Argentina, Yugoslavia, Rwanda, and Sudan, I focused on the extent to which the power of the state's authority in each case was implicated in the large-scale crimes against humanity committed in those countries. These crimes took place under the guise of civil conflicts which began when people within those countries questioned the validity of the existing political order and took armed action against it.

When I asked the question of how sovereign authority may be limited or curbed, I looked at three institutions and practices: humanitarian military intervention, the International Criminal Court, and the promotion of democratization. Each of these was able to place certain limits on what sovereign authorities were able to do, but without the political will and commitment of the international community, the effectiveness of these efforts remains questionable. More importantly, each of these institutions and practices reproduces the bases of sovereign authority in various ways and does not solve the underlying problem of sovereign authority.

The war on Islamist terrorism initiated by the United States after September 2001 brought to the surface similar kinds of questions about state sovereignty in the United States and its allies in Western Europe. In particular, questions have been raised about the sovereignty authority of the state, in particular about the President's powers in wartime, and about human rights issues that people in the West have assumed were settled matters, including the right to privacy, the use of torture to gain intelligence information, and the legal status and treatment of individuals captured in this otherwise unusual conflict.

I was initially reluctant to raise the issue of the war on terrorism because on its face, it sounds absurd to compare the recent actions of the United States government with the governments of Khmer Rouge Cambodia or present-day Sudan. The American government is not engaged in the mass murder of its own civilians, nor has it drastically curbed their civil and political rights. But the expansion of sovereign power within the American government was taking place long before this present conflict, and its implications are not about carrying out blatant offenses against human rights. Instead, the expansion of sovereign power in the United States, and more broadly, in the Western world, is a by-product of the Cold War era. The fear of the expansion of Soviet Communism abroad and at home led the United States and the threat of nuclear conflict altered the foundations of American political life. The McCarthy era was characterized by the suppression of certain forms of political dissent in the United States, aided by the development of an extensive domestic surveillance regime by the FBI under Herbert Hoover. An undeclared war was fought in Vietnam, and the government under Richard Nixon took this system of domestic surveillance even further in spying on his war protesters, civil rights groups, and his political rivals. In the 1980s, the Reagan administration continued the Cold War and, perhaps more pertinent here, declared a “war on drugs” which in turn led to a further increase in domestic surveillance and the explosive growth of the American prison population which has by now exceeded that of every other nation on Earth. The present war on terrorism and the issues it raises about sovereign power and human rights is just another phase of this continuing expansion of the sovereign authority of the American government as it continues to protect its people from threats both within and outside of the country’s borders.

As I have noted before, there is something inherently wrong in this situation, when protection against a threat means a greater and greater need for control over those protected and the continual exercise of the means of violence against a country's own population. In the second half of the 20th century, the terms "war" and "enemy" have come to encompass a realm of meaning that is less about foes faced in pitched battle than shadowy presences seemingly never far away from one's shores, borders, and even neighborhoods. This is why I am inclined to agree with Giorgio Agamben's statement that "[s]overeign violence opens a zone of indistinction between law and nature, outside and inside, violence and law. And yet the sovereign is precisely the one who maintains the possibility of deciding on the two to the very degree that he renders them indistinguishable from each other."³⁴⁵ Sovereign authority, because of its monopoly on the (not necessarily legitimate) use of the means of violence, is able to determine exactly what the political community will be and who will belong. The legitimacy of the political order becomes a moot point when a government undermines democracy and human rights in the name of democracy and human rights. Another European observer, German social theorist Theodor Adorno, made a similar observation in late 1960s.

[G]enocide, the eradication of humanity, and the concentration of people in a totality in which everything is subsumed under the principle of self-preservation, are *the same thing*; indeed . . . genocide is absolute integration. One might say that the pure identity of all people with their concept is nothing other than their death . . . absolute self-assertion and the absolute negation of all that lives . . . are the same thing.³⁴⁶

Sovereign authority, brought to its logical conclusion, keeps its charge, the people, safe by the exclusion of all other peoples from their space. The implication that may be

³⁴⁵ *Homo Sacer: Sovereign Power and Bare Life* (Stanford: Stanford University Press, 1998), p. 64

³⁴⁶ *Metaphysics: Concepts and Problems* ed. Rolf Tiedemann, trans. Edmund Jephcott (Stanford: Stanford University Press, 2000), pp. 108, 109

drawn from both Agamben and Adorno is that the sovereign is at this point in history the ultimate arbiter of life and death, and the protection of human rights and dignity remains a sideline. This threat remains an ever present possibility as long as sovereignty exists.

As the people of the United States and Western Europe settle into a more politically complacent mindset at the beginning of the 21st century, taking the advantages of established political sovereignty for granted, the rest of the world continues to struggle with their own tasks of building and maintaining their own nations. For long-oppressed peoples, whether formerly under colonial rule and having struggled with decades of civil conflict, or having lived for decades under authoritarian governments, this freedom from oppression and freedom to participate in the directions of their governments are the ones that has been long denied. But the self-determination of peoples and nation-building *at the expense* of other peoples is another matter entirely. When this happens, then the concept of sovereignty begins to bare its dark side to the world. What makes nationalism and statehood dangerous is not this desire for freedom, but the seemingly inevitable push to *exclusion* that can appear within the practice of sovereign statehood. The institutions of sovereign authority remain with us, for good or ill, and with the awareness of the dangers inherent within the concept, it also remains for us to promote to good and to reign in the bad as much as possible.

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