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Bureaucracy and the U.S. Response to Mass Atrocity

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ABSTRACT

The U.S. response to mass atrocity has followed a predictable pattern of disbelief, rationalization, evasion, and retrospective expressions of regret. The pattern is consistent enough that we should be skeptical of chalking up the United States' failures solely to a shifting array of isolated historical contingencies, from post-Vietnam fatigue in the case of the Khmer Rouge to the Clinton administration's recoil against humanitarian interventions after Somalia. It is implausible to suggest that the United States would have acted to mitigate or end mass atrocities *but for* the specific historical contingencies that happen to accompany each outbreak of violence. This essay proposes a supplementary explanation for the United States' history of failed responses to mass atrocity. The explanation is based on a widely accepted model of bureaucratic behavior, according to which bureaucracies follow standardized routines, bureaucrats operate according to a "logic of appropriateness" rather than a "logic of consequence," and seemingly irrational results often follow when a bureaucracy is confronted with a problem for which it has no preset response. The essay concludes by endorsing the recent recommendation by Madeleine Albright and William Cohen of various bureaucratic reforms aimed at preventing genocide, including the establishment of a permanent Atrocities Prevention Committee.

By the end of 1942, the U.S. government had adequate evidence to conclude that a campaign to annihilate the Jews of Europe was well underway.[1] The State Department had received intelligence on Hitler's order for a Final Solution, a personal acquaintance of President Roosevelt had informed a press

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[1] *See generally* SAMANTHA POWER, "A PROBLEM FROM HELL": AMERICA AND THE AGE OF GENOCIDE 33–36 (Basic Books 2002) (discussing the information that the government had on the Holocaust); DAVID M. KENNEDY, FREEDOM FROM FEAR: THE AMERICAN PEOPLE IN DEPRESSION AND WAR, 1929–1945, at 795–97 (1999) (identifying the evidence about the Holocaust that was available to the U.S. government); DAVID S. WYMAN, THE ABANDONMENT OF THE JEWS 19–41, 42–58 (1984) (capturing the historical context of the Holocaust and the data that the U.S. received of its existence).

conference that he and the State Department possessed reliable information that some two million Jews had already been murdered, the Office of Strategic Services had learned of the existence of the death camps, and a justice of the Supreme Court, Felix Frankfurter, had personally heard the eye-witness testimony of an escapee from Belzec.[2] In the following two years, public and classified information on the extermination campaign continued to accumulate.[3] Yet through the end of the war, with the limited exception of the creation of the War Refugee Board in 1944, the United States took almost no actions directed specifically toward saving the lives of European Jews.[4]

Two failures to act have drawn particular attention. First, the U.S. government considered and decided not to bomb the Auschwitz extermination camp out of commission, even as American heavy bombers staged several attacks nearby.[5] As a result, the assembly line of train tracks, crematoria and gas chambers continued to function until the fall of 1944.[6] Second, the U.S. government refused to grant temporary refuge to Jews fleeing Europe.[7] In the wake of the Great Depression, the United States had an extremely restrictive immigration quota system, but even the limited quota spots were not filled.[8]

How can the U.S. response to the Holocaust be explained? The question has been a subject of thorough historical attention, and the most widely accepted answers have usually involved some combination of latent or overt anti-Semitism and anti-immigration sentiment among the American public and its officials, an inability or unwillingness to understand the unprecedented enormity of the crime taking place, and the difficulty of allocating attention and resources in the midst of the struggle for military victory.[9] Without denying the validity of these contingent cultural and historical factors, however, their acceptance would only give rise to another mystery. If U.S. inaction during the Holocaust resulted primarily from anti-Semitism or anti-immigrant sentiment, or from the unprecedented nature of the act, or from the competing demands of wartime, how to explain the structurally similar inaction that the United States has displayed in response to nearly every genocide since the Holocaust? No evidence exists of anti-Tutsi or anti-Kurd sentiment, nor have Americans ever feared a wave of Bosnian refugees, nor was the United States so overburdened by wartime mobilization in 1994 that it lacked the ability to attend to the Rwandan genocide.[10]

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[2] *Id.*
[3] *Id.*
[4] *Id.*
[5] KENNEDY, *supra* note 1, at 796.
[6] WYMAN, *supra* note 1, at 288.
[7] *See id.* at 6–9 (discussing the nation's "limited willingness to share the refugee burden").
[8] *See id.* at 136 (noting that 90 percent of the quotas went unused).
[9] *See infra* notes 26, 35, 37, 38.
[10] POWER, *supra* note 1, at xv–xvi.

As Samantha Power persuasively shows in *"A Problem from Hell"* the U.S. response to genocide follows an extremely predictable pattern of disbelief, rationalization, evasion, and retrospective expressions of regret.[11] Power summarizes the pattern in a series of four bulleted points in the preface to her book,[12] then illustrates the pattern in detail over the course of chapters on the U.S. response to mass atrocities in Cambodia, Iraq, Bosnia, Rwanda, and elsewhere. The pattern has arguably been repeated since the publication of Power's book in the U.S. response to the mass atrocities in Darfur.[13]

A systemic failure of some kind seems to be at work. The failure is predictable enough that we might be skeptical of attempts to chalk it up solely to a shifting array of isolated historical contingencies in each case, from post-Vietnam fatigue in the case of the Khmer Rouge to the Clinton administration's recoil against humanitarian interventions after Somalia. It seems implausible to suggest that the United States would have acted to mitigate or end the mass atrocities described by Power *but for* the specific historical contingencies that happened to accompany each outbreak of violence. To accept this explanation of U.S. failure seems to require accepting a long string of parallel historical coincidences, as though nearly every time a genocide has begun, it has just so happened that another, unrelated, counterbalancing event has practically or politically prevented the United States from adequately responding.

A more plausible explanation would be that there is some set of structural, long-term defects largely driving the U.S. response to mass atrocity. Even if the specific historical contingencies accompanying the genocides above had been absent, or materially different, these structural defects would likely still have prevented the U.S. from acting. In their retrospective expressions of regret, outgoing government officials might simply have assigned blame to some other passing contingency or exceptional breakdown in governmental processes.[14]

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[11] *Id.* at xvii–xviii.

[12] *Id.*

[13] *See* Erin Patrick, *Intent to Destroy: The Genocidal Impact of Forced Migration in Darfur, Sudan*, 18 J. REFUGEE STUD. 410, 422 (2005) (noting Bush administration's exceptional willingness to use term "genocide" in reference to Darfur, but "without any corresponding change in action or policy").

[14] The remarkable similarity of expressions of regret by former U.S. Secretaries of State contributes to the sense of a structural, rather than merely personal, failure:

> [Rwanda] sits as the greatest regret that I have from the time I was U.N. ambassador and maybe even as [S]ecretary of [S]tate, because it is a huge tragedy, and something that sits very heavy on all our souls, I think.
> —Former U.S. Secretary of State Madeleine Albright, February 25, 2004

> You look at something like Darfur, and it just breaks your heart.
> —Former U.S. Secretary of State Colin Powell, September 20, 2008

The following essay attempts to apply Graham Allison's and Philip Zelikow's three models of governmental action to the explanation of the U.S. response to mass atrocities.[15] In particular, the essay focuses on the often neglected explanatory power of Model II, the Organizational Behavior Model. The aim will be to follow Allison's exhortation to move beyond "unique explanations" of isolated U.S. governmental actions—in this case, U.S. responses to mass atrocity—and toward "characterization of these phenomena at a more general level."[16] In conclusion, the essay will propose structural reforms to address the structural problems that have so often led the United States to respond inadequately to the occurrence of mass atrocities, to express remorse in retrospect, and then to repeat its mistakes once again.

Allison's Model II may be as relevant to understanding the U.S. response to the Holocaust and subsequent genocides as it is to understanding America's failure to anticipate or prevent the attack on Pearl Harbor. If one relies entirely on the Rational Actor Model to explain the latter failure, Allison notes, one may feel driven toward an implausible explanation based on a conspiracy, possibly involving President Roosevelt, or based on exceptional, widespread institutional failure.[17] Once one adopts Model II, however, the failure to predict the attack on Pearl Harbor is relatively easily understood as a natural though not inevitable result of the "relevant organizations . . . function[ing] in accordance with established routines."[18]

Similarly, if one relies on the Rational Actor Model to explain the U.S. response to the Holocaust, one may have trouble fathoming how the U.S. government could have valued thousands of Jewish lives less than the cost of a bombing run, or how the United States could have preferred to see tens of

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> [O]ne of the real regrets I've had is that we haven't been able to do something about Sudan.
> —Former U.S. Secretary of State, Condoleezza Rice, November 13, 2008

John Norris, *Getting It Right: What the United States Can Do To Prevent Genocide and Crimes Against Humanity in the Twenty-First Century*, 27 YALE L. & POL'Y REV. 417, 417 (2009).

[15] Model I, the Rational Actor Model, conceives of the government as a centrally controlled, completely informed, rationally maximizing actor. Model II, the Organizational Behavior Model, focuses on the effects of the standardized procedures, routines, and cultures of government bureaucracies. Model III, the Governmental Politics Model, concentrates on bargaining among political actors within the government, especially at high levels in the executive branch. GRAHAM ALLISON & PHILIP ZELIKOW, ESSENCE OF DECISION 4–6 (2d ed. 1999). For convenience, I will refer to Allison and Zelikow collectively as "Allison" in the text.

[16] *Id.* at 389.

[17] *Id.* at 175.

[18] *Id.* at 176.

thousands of people die rather than granting them temporary safe harbor. One may be tempted to turn to Model III and focus on the obstruction of key internal governmental figures, such as Breckinridge Long, the notorious assistant secretary in the State Department who blocked the issuing of visas to Jewish refugees, repeatedly disrupted rescue efforts, and obscured his actions in inaccurate testimony before Congress;[19] or John McCloy, the assistant secretary of war who made the decision not to bomb Auschwitz.[20] One will search for the morally responsible individuals in the government, those who decided that Jewish lives were not worth saving.

But even when one has identified the individuals who appear to be responsible, one may have trouble making sense of their actions. It was originally assumed by many historians, for example, that Long must have been motivated by anti-Semitism, and various derogatory references in his writings were produced as evidence.[21] But a more recent study summarizes growing doubts regarding Long's anti-Semitism and concludes: "Breckinridge Long can best be understood against the backdrop of preexisting refugee policy and the cross pressures to which he was subjected by virtue of his appointment. He was conscious of State's mandate to enforce America's restrictive laws rigorously."[22] Long was a political appointee in the bureaucracy of the Department of State, and he apparently took the actions he did at least in part as a result of the pressures exerted upon him in his position.[23] The bureaucracy had developed capacities and routines for enforcing a highly restrictive immigration quota system.[24] The bureaucracy's culture—its "organizational essence"[25]—was shaped by widespread Congressional and public antipathy toward immigration in the wake of the Great Depression.[26] Bureaucrats might reasonably have internalized a sense that the more strictly they enforced immigration laws, the more their organization and they themselves would benefit.

Perhaps even more importantly, responding to the attempts of refugees to flee a genocide fell far outside any "*standard scenarios*"[27] that the bureaucracy had prepared itself to address. There were no standard operating procedures or

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[19] *See* RICHARD BREITMAN & ALAN M. KRAUT, AMERICAN REFUGEE POLICY AND EUROPEAN JEWRY, 1933–1945, at 126–45 (1987) (discussing Breckinridge Long's actions and policies toward Jewish refugees).
[20] KENNEDY, *supra* note 1, at 796.
[21] *See* BREITMAN & KRAUT, *supra* note 19, at 126–27 (noting "Long's reputation as an anti-Semite" and his "references to refugee advocates" in "phrases that ring of anti-Semitic feelings," such as "'Frankfurter's boys' or 'New York liberals'").
[22] *Id.* at 127.
[23] *Id.* at 126–27.
[24] *Cf. id.* at 28 ("Long opposed liberalization of America's restrictive policies."); WYMAN, *supra* note 1, at 6 (noting that the nation's small quota limits were established in the 1920s).
[25] ALLISON & ZELIKOW, *supra* note 15, at 167.
[26] *See* WYMAN, *supra* note 1, at 6–8.
[27] ALLISON & ZELIKOW, *supra* note 15, at 171.

routines for such a contingency.[28] The word "genocide" did not even exist in 1942.[29] If Felix Frankfurter, Isaiah Berlin, and David Ben-Gurion had trouble coming to terms with the notion of a systematic program of racial extermination,[30] there seems little hope that an unprepared bureaucracy would be able to respond rationally as an institution. Rather, Allison's model suggests that "[w]here situations cannot be construed as standard, organizations engage in search," which is "problem-oriented: it focuses on the atypical discomfort that must be avoided. It is simple-minded: the neighborhood of the symptom is searched first, then the neighborhood of the current alternative."[31] This seems to have been more or less what Long's bureaucracy did. Confronted with a discomforting, non-standard scenario—an unprecedented refugee crisis—it assimilated the scenario to its ordinary procedures and clamped down even further on the admission of refugees, refusing to fill 90% of the quota spots that might have been available for European Jews.[32] The catastrophic performance of Long's visa-issuing bureaucracy may be seen as an almost predictable example of what often happens in a bureaucracy when "new, unfamiliar tasks are superimposed onto old routines."[33] Given the "gravitational pull"[34] that existed within the agency toward restricting immigration, it would probably have taken extraordinary leadership to balance the continuation of the restrictive policy in general with a special, expansive exception for Jewish refugees.

The same can be said of John McCloy's bureaucracy in the Department of War. Far from having responded to information about the extermination of the Jews with indifference or contempt, McCloy's response is eerily similar to that of the Jewish, ardent Zionist Supreme Court justice Felix Frankfurter, or for that matter the responses of Nahum Goldman, Chaim Weizmann, and David Ben-Gurion, all of whom seemed incapable of fully believing the reports they received of the Final Solution.[35] As late as December 1944, McCloy took aside an official

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[28] MADELEINE K. ALBRIGHT & WILLIAM COHEN, PREVENTING GENOCIDE: A BLUEPRINT FOR U.S. POLICYMAKERS 60 (2008), *available at* http://media.usip.org/reports/genocide_taskforce_report.pdf ("[N]o single office or interagency body in the U.S. government is responsible for thinking about or planning how the United States might respond to warning of genocide or mass atrocities.").

[29] *See* POWER, *supra* note 1, at 40–46 (discussing Raphael Lemkin's coining of the term "genocide" in 1944).

[30] *See infra* note 35.

[31] ALLISON & ZELIKOW, *supra* note 15, at 171.

[32] *America and the Holocaust: Breckinridge Long*, PBS, http://www.pbs.org/wgbh/amex/holocaust/peopleevents/pandeAMEX90.html (last visited Feb. 19, 2011) ("[T]he effect of the immigration policies set by Long's department was that, during American involvement in the war, 90 percent of the quota places available to immigrants from countries under German and Italian control were never filled. If they had been, an additional 190,000 people could have escaped the atrocities being committed by the Nazis.").

[33] ALLISON & ZELIKOW, *supra* note 15, at 158.

[34] *Id.* at 159.

[35] *See* POWER, *supra* note 1, at 34; KENNEDY, *supra* note 1, at 796–97.

from the World Jewish Congress and asked: "We are alone. Tell me the truth. Do you really believe that all those horrible things happened?"[36] An imaginative and humane leader might have done more in McCloy's position, just as an imaginative and humane leader certainly would have done more in Long's. But in the end, McCloy's bureaucracy, like Long's, behaved more or less as it was designed to do. The U.S. Army Air Forces had not been given the task of disrupting the operation of the Third Reich's network of extermination camps, and such an action certainly lay outside any established standard operating procedure, routine, or bureaucratic self-conception.[37] Organization theory would predict precisely what happened: all other things being equal, the bombing would not take place. The U.S. Army Air Forces bureaucracy continued to fulfill its organizational objective of pursuing military victory by destroying the warmaking infrastructure of the Third Reich.[38]

It has been a commonplace, at least since Hannah Arendt's *Eichmann in Jerusalem*, that the evil of the Final Solution was in many ways a bureaucratic phenomenon, the product of incongruously banal organizational behaviors.[39] The genocide scholar Irving Horowitz has gone so far as to define genocide as "a structural and systematic destruction of innocent people by a state bureaucratic apparatus."[40] The mass atrocities in Darfur, if one calls them a genocide, may provide a partial exception, in the sense that in Darfur, "there has never been a stable, technocratic regime or a bureaucracy to plan, execute, and document an orderly mass killing."[41] But even in the case of Darfur, the central government in Khartoum used bureaucratic obstruction to interfere with relief efforts.[42]

Less attention has been paid to the important role of organizational behavior in shaping international responses to genocide, as suggested in the examples from the U.S. response to the Holocaust above. We tend to ascribe an immoral "logic of consequences" to individual actors within the government, or to

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[36] KENNEDY, *supra* note 1, at 796.

[37] *See id.* ("The [World Refugee Board] . . . submitted a recommendation to Assistant Secretary of War McCloy that the Auschwitz death camp should be bombed out of commission, even if the bombs would kill some of the Jewish inmates. McCloy rejected the idea.").

[38] *See id.* ("McCloy may well have concluded that rescue through victory was more likely than rescue through a singular action deep inside Poland.").

[39] *See generally* HANNAH ARENDT, EICHMANN IN JERUSALEM: A REPORT ON THE BANALITY OF EVIL 78–98 (1963).

[40] IRVING LOUIS HOROWITZ, TAKING LIVES: GENOCIDE AND STATE POWER 23 (5th ed., 2002) (italics removed). *Cf., e.g.*, STEPHEN KINZER, A THOUSAND HILLS 138 (2008) (quoting a historian of the Rwandan genocide: "There was little spontaneity in the whole process, apart from some young street urchins joining in the bloody fun . . . . Everything went ahead with the precision of a well-rehearsed drill.").

[41] Mai-Linh K. Hong, *A Genocide By Any Other Name: Language, Law, and the Response to Darfur*, 49 VA. J. INT'L L. 235, 262 (2008).

[42] Jennifer Trahan, *Why the Killing in Darfur Is Genocide*, 31 FORDHAM INT'L L.J. 990, 1048 (2008).

the government as a whole, rather than explaining the government's cumulative behavior as at least in part the result of actors behaving according to a "logic of appropriateness."[43] That is, we identify the figures who failed to act and then attempt to make sense of their failures by assuming that they chose the courses of action that best satisfied their underlying preferences, which we then conclude must have been reprehensible. For whatever reasons, most of us intuitively turn to such rational actor explanations rather than considering that the relevant actors might not have been making rational, consequentialist calculations at all, but might have been largely doing what seemed *appropriate*, responding based on the standard routines at their disposal, just as we generally expect and desire the members of a bureaucracy to do.

Though one frequently comes across brief references to bureaucratic inertia in writings on the response to genocide,[44] the only sustained study of the response to genocide as a bureaucratic phenomenon appears to be Michael N. Barnett's *Eyewitness to a Genocide: The United Nations and Rwanda* (2003). Barnett, a political officer of the U.S. Mission to the UN at the time of the genocide, describes how he and nearly all other insiders at the UN came to oppose intervention in Rwanda, and thus why the UN did nothing.[45] The best explanation, he finds, requires looking to "how a bureaucratic culture shapes individuals."[46] Though Barnett draws from Max Weber and Hannah Arendt rather than more recent theorists of bureaucracy such as Allison and Morton Halperin, his analysis shares the "new institutionalist" understanding of how bureaucracies can function not only as neutral, more or less efficient tools for achieving externally determined ends, but can powerfully shape those ends, often in unpredictable or even irrational ways.[47] In terms that echo Allison's discussion of the logic of appropriateness and the potential irrationality of bureaucratic cultures, Barnett summarizes his findings:

> The culture within the UN generated an understanding of the organization's unique contribution to world politics. It produced rules that signaled when peacekeeping was "the right tool for the job." It contained orienting concepts such as neutrality, impartiality, and consent, which governed how peacekeepers were supposed to operate in the field . . . . In brief, those working at the

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[43] *See* ALLISON & ZELIKOW, *supra* note 15, at 146 (discussing the difference between a logic of "consequences" and a logic of "appropriateness").

[44] *See, e.g.*, POWER, *supra* note 1, at xx (referring to the "intransigent bureaucracy" that resisted bombing Serb ethnic cleansers in Bosnia).

[45] MICHAEL N. BARNETT, EYEWITNESS TO A GENOCIDE: THE UNITED NATIONS AND RWANDA ix–xi (2003).

[46] *Id.* at xi.

[47] *Cf.* ALLISON & ZELIKOW, *supra* note 15, at 153–58 (defining "new institutionalism" as viewing organizations and bureaucrats as "more autonomous," with the ability to define critical tasks in order to cater to the preferences of both the organization and its managers).

> UN approached Rwanda not as individuals but rather as members of bureaucracies. They occupied roles that organizationally situated and defined their knowledge, and informed what they cared about, what behavior they considered appropriate and inappropriate, how they distinguished acceptable from unacceptable consequences, and how they determined right from wrong. Something about the culture at the UN could make nonintervention not merely pragmatic but also legitimate and proper—even in the face of crimes against humanity.[48]

Barnett thus arrives at an extremely different picture of UN inaction during the Rwandan genocide than the ordinary one reflected in, for example, Stephen Kinzer's *A Thousand Hills*. Ultimately, both Barnett and Kinzer recognize the moral culpability of UN leaders such as Kofi Annan, then Director of the Department of Peacekeeping Operations, and Secretary General Boutros Boutros-Ghali. But in Kinzer's presentation, the callousness of figures like Annan, Boutros-Ghali and U.S. Secretary of State Madeleine Albright ("[a]t every point as the Rwanda crisis intensified, she worked diligently to keep the UN peacekeeping force small and weak"[49]), seems inexplicable. Public servants who at other moments in their careers have been recognized for their humanitarian sympathies appear to perform diabolical calculations in which the risk to thousands of Tutsi lives is simply shrugged off. But once we consider that an organizational logic of appropriateness may have displaced to some extent the calculation of moral consequences, the actions of Annan, Boutros-Ghali, Albright and others become more explicable, though not necessarily excusable. Albright may have approached the unexpected problem placed before her not as an individual but as a member—as the leader—of the State Department bureaucracy, an organization that had no pre-established routine (or generic policy plan) for responding to genocide, that had never suffered in the past as an organization for failing to respond to a genocide, and that possessed an organizational essence focused on diplomacy, not military intervention.

Because organizational theory has so rarely played a role in explanations of the U.S. response to mass atrocity, it may be worth pausing to consider some of the alternative explanations. For example, Samantha Power, a protégé of Allison's and co-editor with him of a book on the implementation of human rights policy,[50] cites the original edition of *Essence of Decision* in the bibliography to *"A Problem from Hell,"* and is thus more than aware of Model II. But she chooses not to give organizational theory a central place in her account of America's behavior in the age of genocide. Instead, Power concludes, in the general spirit of Model III, that "[i]t is in the realm of domestic politics that the battle to stop

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[48] BARNETT, *supra* note 45, at xi.
[49] KINZER, *supra* note 40, at 118.
[50] REALIZING HUMAN RIGHTS: MOVING FROM INSPIRATION TO IMPACT (Samantha Power & Graham T. Allison eds., 2000).

genocide is lost."[51] "No U.S. president," Power writes, "has ever made genocide prevention a priority, and no U.S. president has ever suffered politically for his indifference to its occurrence. It is thus no coincidence that genocide rages on."[52] Her historical narratives also locate significant explanatory power in the U.S. national interest, in the spirit of Model I. For example, in explaining America's relatively exceptional early intervention in the ethnic cleansing in Kosovo, Power notes that the operation "would probably not have been launched without the perceived threat to more traditional U.S. interests," in particular "the threat to American credibility" in the face of Milosevic's brazen defiance of U.S. demands.[53]

The vast majority of Power's book, however, is dedicated to the stories of brave, individual dissenters and advocates inside and outside of government, from Raphael Lemkin, the father of the Genocide Convention and coiner of the term "genocide," to the young bureaucrats who resigned from the State Department in protest over U.S. policy on Bosnia.[54] Perhaps in order to inspire readers to increase political pressure on the U.S. government to respond forcefully to genocide—in line with her generally Model III-type theory that domestic politics controls humanitarian policy outcomes—Power places at the center of her book a number of figures who, by the terms of her own model, did not significantly determine the course of events.[55]

In a recent article, John Norris, the Executive Director of the Enough Project, articulates the model of government behavior that seems to underlie Power's book:

> How is it that the United States stood with its hands in its proverbial pockets as such atrocities took place? Perhaps it is more important to understand exactly how successive administrations have avoided addressing genocide and war crimes than to focus solely on the bureaucratic improvements that would make responses more effective. There is no substitute for genuine political will coupled with an educated public constituency that believes mass killings are unacceptable.[56]

As Norris makes even clearer elsewhere in the article, his model of U.S. governmental behavior in response to mass atrocities is a combination of Model I, with a focus on centralized decisions made by the President, and Model III, with a

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[51] POWER, *supra* note 1, at xviii.
[52] *Id.* at xxi.
[53] *Id.* at 448.
[54] *Id.* at 313.
[55] *Cf.* POWER, *supra* note 1, at xviii ("By seeing what [these figures] tried to get done, we see what America could have done . . . . By seeing how and why they failed, we see what we as a nation let happen.").
[56] *See* Norris, *supra* note 14, at 420.

focus on internal debates among high-level policy advisors, undertaken in the context of domestic political pressures.[57] He explicitly downplays the importance of the bureaucratic structures emphasized by Model II.[58]

It is not this essay's goal to deny that Presidential leadership or domestic political pressure could be sufficient to bring about an adequate American response to mass atrocity. If domestic political pressure were strong enough, or if the President took the initiative, there is no reason to believe that the diplomatic, humanitarian and military bureaucracies would fail to serve as more or less effective instruments—though their institutional structures would no doubt shape the options considered and the information received by political leaders. Power's, Norris', and many others' efforts to raise awareness and organize interest group pressure in favor of effective U.S. responses to mass atrocities are of course to be applauded, and we can all only hope that they succeed.

But what if such efforts do not succeed? And what if the President has no overriding personal commitment? This is the possibility that makes the consideration of Model II vital to understanding and improving the U.S. response to mass atrocity. Governmental action against mass atrocities can be initiated either by the President personally, or as a result of pressure on the President by concerned senior advisors, or as a result of pressure on the White House by concerned political interest groups and their representatives.[59] When none of these triggers are engaged, however, the responsibility for initiating any U.S. response devolves to existing bureaucracies.[60] In practice, State Department bureaucrats appear to be the last resort for U.S. governmental action against mass atrocities.[61]

The question is then: when all else fails, do we have appropriate bureaucratic systems in place to provide a backstop against political failures to take action against mass atrocities? The answer is clearly no.[62] A bipartisan task

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[57] *See id.* at 431 (echoing Model I: "Still, the hardest choice facing President Obama will be deeply personal. Will he stake his reputation on an honest conversation with the American public?"); *see also id.* (echoing Model III: "Political advisers will argue that tough action would expend too much political capital, career staffers at the State Department and Pentagon will sketch out nightmare scenarios of U.S. interventions gone wrong, and legislators will contend that domestic policy should trump international adventurism.").

[58] *See id.* at 420.

[59] ALBRIGHT & COHEN, *supra* note 28, at 59.

[60] *Id.*

[61] *See id.* ("This mechanism for crisis management, however, has rarely been used to consider threats of genocide or mass atrocities.").

[62] Nor is there an adequate, permanent international bureaucracy to address the specific threat of genocide. *See* Cherif Bassiouni, Remarks, *Genocide: The Convention, Domestic Laws, and State Responsibility*, 83 AM. SOC'Y INT'L L. PROC. 314, 315 (1989) ("[T]he Genocide Convention, unlike others, has not created an international bureaucracy . . . . The ILO, or the International Committee of the Red Cross, or the several bodies dealing with narcotics, are all bureaucracies that have an interest in perpetuating their existence;

force on preventing genocide co-chaired by former Secretary of State Madeleine Albright and former Defense Secretary William Cohen reached the same conclusion in a report released in 2008.[63] It is with some of this report's recommendations that I will conclude, because they capture extremely well the kind of reforms that attention to Model II would suggest.

Albright and Cohen recognize, like Power, that there are specific steps that should be taken, at minimum, whenever the U.S. government becomes aware of a risk of genocide, and that there are a wide range of options beyond these minimal steps that do not require military intervention.[64] But whereas Power puts her emphasis almost exclusively on developing public pressure and political will for these actions,[65] Albright and Cohen recognize a role for permanent bureaucratic structures as a failsafe in case of political failure, and as a spur to political reconsideration where it has fallen short.[66]

The first major finding of their report recognizes that in the past, the degree of success in U.S. responses to genocide has been determined by "[i]nterest and attention from the highest ranks of the U.S. government," but that this is "extremely difficult to mobilize and sustain."[67] Given the inconsistency and unreliability of high-level political commitment, the report's second major finding emphasizes the importance of establishing "an overarching policy framework, a standing interagency process for devising and implementing preventive strategies, and significant dedicated institutional capacity."[68] In other words, they propose the bureaucratic entrenchment of mechanisms for responding to genocide even when political will does not materialize in sufficient quantities to generate an effective response.

This essay will not rehearse the details of Albright's and Cohen's proposal, but it features specific devices that aim to avoid the moral hazard created by past bureaucratic activity, "which permitted an illusion of continual deliberation, complex activity, and intense concern," while accomplishing little or nothing in fact.[69] Albright and Cohen explicitly recognize the weaknesses of existing bureaucratic structures tasked with preventing mass atrocities, such as the

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they always find opportunities for the development of new and improved international instruments.").

[63] *See* ALBRIGHT & COHEN, *supra* note 28, at 3 (noting the lack of bureaucratic mechanisms for genocide prevention and response).

[64] *See* POWER, *supra* note 1, at 514 (listing things that "the United States should do . . . in every case" and other steps on a spectrum ending with military intervention).

[65] *See id.* at 509 (asserting that, because of a lack of political and public pressure, "[t]he battle to stop genocide . . . has been repeatedly lost in the realm of domestic politics").

[66] *See* ALBRIGHT & COHEN, *supra* note 28, at 3 (discussing the problems of "bureaucratic indifference," "political obstacles," a lack of "reliable, long-standing institutional structures," and failure to "draw lessons from both success and failure").

[67] ALBRIGHT & COHEN, *supra* note 28, at 1.

[68] *Id.* at 3.

[69] POWER, *supra* note 1, at 508.

State Department Office of War Crimes Issues, established by Albright in 1997 but now working almost exclusively on war crimes tribunal issues, and the State Department Office of the Coordinator for Reconstruction and Stabilization, which "has suffered from funding shortfalls, a relatively weak standing within the State Department (to say nothing of the larger U.S. bureaucracy), and uncertainties about its long-term future."[70]

In particular, Albright and Cohen propose the establishment of a new, interagency Atrocities Prevention Committee (APC) and offer recommendations for how it can be structured to avoid bureaucratic ineffectiveness:

> The APC's work would be supported and coordinated by a newly created NSC directorate for crisis prevention and response. This directorate would . . . direct and coordinate U.S. government action across a broad range of instability and humanitarian emergencies, not solely genocide and mass atrocities. Situating the APC in this context would give the committee dedicated, specialized capacity while integrating its work into mainstream priorities.
>
> The temptation when addressing specific concerns is to create a specific set of responses, such as a special coordinator with a single, stand-alone office. However, as similar initiatives have demonstrated, the end result is typically bureaucratic marginalization if not outright irrelevance. By embedding genocide prevention initiatives into a larger functional imperative—namely, crisis prevention and response—the likelihood that the United States would be prepared, able, and, moreover, willing to respond in the future would be significantly enhanced.[71]

Albright and Cohen also recognize the importance of "effective organization within the State Department . . . given how deeply State is involved in virtually all U.S. efforts to prevent genocide and mass atrocities." [72] Their recommendation here is equally attuned to the risk of bureaucratic marginalization:

> We recommend that the secretary [of State] designate the assistant secretary for democracy, human rights, and labor as the single point of responsibility for coordinating genocide prevention efforts with others in the department, particularly the regional bureaus. Genocide is, fundamentally, a human rights issue, and DRL's broad mandate should help the assistant secretary mobilize preventive actions at an early stage, long before mass atrocities are

[70] ALBRIGHT & COHEN, *supra* note 28, at 4, 60.
[71] *Id.* at 8–9; *see also id.* at 55–72 (discussing the challenges and effectiveness of various reforms and strategies to "halt and reverse escalating threats of mass atrocities").
[72] *Id.* at 9.

> imminent. To be effective as a senior point person for State, the assistant secretary must command respect throughout the department and abroad, with demonstrable ability to take policy disputes directly to the secretary. The staff and resources of DRL should be supplemented to match the additional responsibilities of coordination within State and outreach abroad to mobilize support for preventive action. Together with the NSC director for crisis prevention and response—or an equivalent senior NSC official, if that position is not created—the assistant secretary should co-chair the APC.[73]

Surveying the literature on the U.S. response to mass atrocity, a pattern emerges. The greater an individual's exposure to government bureaucracy, the more importance the individual seems to place in organizational theory as a factor in explaining the failed U.S. responses to genocide. Albright, Cohen and the other members of their task force, nearly all former executive officials or legislators, place a great deal of emphasis on bureaucratic structures, as does Barnett, the former bureaucrat. Those affiliated with NGOs and academia tend to downplay the importance of organizational behavior.[74] There is no need for this pattern to continue. It is possible to accept both that the most forceful U.S. responses to mass atrocity will have to come from public activism and political leadership, and that there is an important role to be played by bureaucratic structures as a failsafe or catalyst for generating political action. Albright's and Cohen's recommendations have not yet received the attention they deserve.[75] Perhaps with greater support from the non-governmental human rights community, their proposals for bureaucratic reform in particular could be realized before the United States finds itself expressing regret for its failure to act once again.

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[73] *Id.*

[74] Now that Samantha Power is a member of the Obama administration, serving as the Senior Director for Multilateral Affairs and Human Rights at the National Security Council in the White House, it will be interesting to see whether any change emerges in her previously skeptical view of the potential for U.S. bureaucracies to play a significant role in the response to mass atrocity.

[75] This may, however, be changing. After the writing of this article but before publication, the White House created a new position on the National Security Council, the Director for War Crimes, Atrocities, and Civilian Protection. *See* Profile: David Pressman, WHORUNSGOV, http://www.whorunsgov.com/Profiles/David_Pressman (last modified Mar. 08, 2011, 4:08 AM).