

Introduction

This book presents the first general theory of the influence of norms on genocide and mass atrocity. It does so by combining conceptual and empirical arguments. At the conceptual level, the book offers a clear account of norms and norm transformation, one that is rooted in recent work in moral and political philosophy, but intended for readers approaching these topics from a broad range of backgrounds. At the empirical level, the book examines numerous historical cases of large-scale crimes, employing documentary and testimonial sources in order to illustrate the various roles norms perform before, during, and after such crimes. Ultimately the book argues that norms—moral, legal, and social—are integral to both the explanation and the prevention of mass atrocities.

Research on genocide and other kinds of large-scale crimes has long been the province of empirical social scientists. Historians and psychologists, sociologists and political scientists have all tested their respective disciplinary methods on the hard problems of mass killing, mass rape, forced removal, and other forms of mass atrocity.¹ More recently, anthropologists, economists, and scholars of language have added their observations to the expanding literature on such crimes.² Through this interdisciplinary research program, it has become possible to regard even the most grievous harms as phenomena with a long history, a typical etiology, and an internal rationality.

For all the insights offered by contemporary social science, it would be wrong to conclude that mass atrocities must be viewed merely as empirical facts. This is because genocide and other large-scale crimes are also matters of profound normative concern. In studying such crimes, we not only seek to discover the conditions that make them possible or the causes that make them actual. We are equally concerned with the wrongs these acts embody, the punishments they merit, and the interventions they license.

Philosophy has an important part to play in uniting these empirical and conceptual strands of inquiry. As a discipline, philosophy has long assessed the structure and coherence of explanatory theories. It has equally appraised the soundness of normative claims. By bringing the analytical tools of philosophy to bear on findings advanced by historians, psychologists, and other social scientists, this book demonstrates the central place of norms in efforts to explain and constrain mass atrocities.³

I.1 The Notion of Norms

Norms are practical prescriptions, permissions, or prohibitions, accepted by individuals

belonging to particular groups, organizations, or societies, and capable of guiding the actions of those individuals. Accepting norms entails adopting various practical commitments and normative attitudes. These include a commitment to obey the requirements embodied in specific norms, as well as a disposition to disapprove of, and perhaps punish, fellow group members who fall short of those requirements.

Philosophers frequently distinguish between empirical and normative notions of norms—between the prescriptions, permissions, and prohibitions that are in fact accepted by individuals, on the one hand, and the prescriptions, permissions, and prohibitions that individuals *ought* to accept, on the other.⁴ This study focuses on norms in the former, empirical sense. I am concerned chiefly with explaining the power of accepted norms to guide individuals' decisions and actions in times of severe social and political upheaval. Studying the influence of norms under such straitened conditions serves several aims. It will aid efforts by historians and other scholars to account for widespread participation by “ordinary” individuals in atrocities. It will assist policymakers seeking to use norms to prevent recurrences of large-scale crimes. And it will amend recent philosophical work on the social and political significance of norms, in which norms feature chiefly as sources of stability rather than as vectors for violence.

The urgency of these undertakings stems from the conviction that genocide and mass atrocity are manifestly, even supremely, wrong. Activists and institutions whose missions start from this conviction regard it as an expression of basic normative truths: such actions *are* wrong, they *deserve* opprobrium, they *must be* prevented. I share these views. But it is not my aim in this study to convince readers of the unconscionability of mass atrocities.⁵ Instead, I advance the less obvious claim that such crimes depend on the persistence of norms within the groups that perpetrate them and those that suffer them. Mass atrocities, in other words, typically reflect the presence, not the absence, of norms.

Vindicating this claim requires that I defend the baseline definition of norms I just offered. It requires that I draw distinctions among various kinds of norms—notably, moral, legal, and social norms—and contrast these with other forms of social ordering, such as taboos or conventions. Finally, it requires that I show how norms can become legitimate objects of historical and social scientific inquiry. All of these issues will be addressed in the course of this study. For now, however, another problem demands attention: the problem of defining mass atrocity.

1.2 The Concept of Mass Atrocity

Raphael Lemkin, the Polish lawyer who coined the term *genocide*, saw it as a specific kind of crime, conspicuous for the intention among its perpetrators to destroy not just large numbers of individuals but whole groups.⁶ The definition embedded in the 1948 UN Convention on the Prevention and Punishment of the Crime of Genocide narrows this category of criminality still further, singling out a small set of groups as legally recognizable targets of genocide.⁷ Such definitional restrictions have fueled heated debates among scholars, jurists, and activists about the essential features of genocide. They also raise questions about the

extent to which genocide exemplifies mass atrocity.

It might be possible to conduct a study of norms focusing solely on the crime of genocide. Such a project would face two major hurdles. First, as has often been noted, genocide presents researchers with a “small-*N*” problem: the number (*N*) of recognized cases is too small to support robust statistical analyses of the causes and conditions of this crime.⁸ This problem reflects, in part, the definitional disputes I mentioned. But it also reflects the fact that under any plausible definition, genocide seems to occur less frequently than mass killing, mass rape, and other forms of mass atrocity.

The second challenge for a study focusing solely on genocide is not statistical but conceptual. Starting with Lemkin, numerous authors have argued that genocide need not involve any bodily harm, but may at times proceed bloodlessly, through the destruction of shared group identities. Such identities are rooted in part in shared norms. Hence, it is conceivable that coercively imposed changes to group norms could sometimes *constitute* genocide. The difficulties this line of thinking raises are substantial, and although they should be addressed, I do not seek to do so here.⁹ Instead, my focus falls on what Lemkin called “physical genocide,” along with nongenocidal acts of mass killing, mass rape, and forced removal.¹⁰

Over the past few decades, various terms have been adopted to refer to such acts. Two of the most common terms, which I employ throughout this study, are *mass atrocity* and *large-scale crimes*. In order to head off potential confusions arising from this usage, I must address two issues.

First, both *mass atrocity* and *large-scale crime* imply a particular magnitude of harm. There are two rival approaches to specifying this magnitude. One approach is quantitative and focuses on the precise number of victims of such crimes. So in recent years, academics and activists have proposed the bright-line number of 1,000 civilian deaths occurring over a discrete period of time as a minimum threshold for mass killings.¹¹ The other approach is qualitative and focuses on the extent of perpetration as well as on the scale of suffering. According to this approach, mass atrocities are defined as temporally extended assaults *by* large numbers of individuals *on* large numbers of individuals, where the latter are often further qualified as people particularly vulnerable to harm.¹²

In this study, I adopt the qualitative approach to the scope of mass atrocity. In my view, the numerical threshold that quantitative scholars now propose is too low to support an inquiry into the influence of norms on mass atrocities. The killing or maiming of a thousand civilians, though morally disastrous, may result from the chance detonation of a single explosive or the misdirected fire of a single infantry unit. It is unreasonable to suppose that laws, social norms, or moral permissions must be implicated in explanations of such tragedies. It is equally unreasonable to hope that changes in norms might suffice to prevent them. The qualitative definition, while still referencing the scope of harm, does not propose an implausibly low numerical threshold. At the same time, it highlights the widespread nature of perpetration—something that scholars of mass atrocity have long sought to understand. Ultimately, this definition provides better access to the acts I am concerned with,

and a better index of the questions I address.¹³

Turning to a second potential point of confusion, both *mass atrocity* and *large-scale crime* cast the acts and policies they name as criminal. This is obvious in the case of large-scale crime. It may be less so in the case of mass atrocity. The term *atrocity*, as Mark Osiel has observed, descends from Roman military law, where it denoted actions deemed unlawful even when ordered by a duly authorized commander.¹⁴ Elsewhere, I have argued that the set of actions that can be plausibly called atrocities is subject to substantial semantic variation, swelling or shrinking in order to fit political needs.¹⁵ I do not wish to downplay the difficulty of identifying legitimate referents of mass atrocity. But I do reject the claim, sometimes advanced by social scientists, that it is in principle inappropriate to define genocide, mass killing, mass rape, and other mass atrocities as crimes.¹⁶ To be sure, such actions have not always been, and are not always now, criminalized. Nor do legal definitions of such actions align perfectly with popular or scholarly conceptions—as indicated by the term *genocide* or by proposed alternatives, such as *atrocity crimes*.¹⁷ Nevertheless, it is both etymologically accurate and analytically appropriate to refer to mass atrocities as large-scale crimes.¹⁸

I.3 The Enigma of Explanation

In his 2017 study, *Why? Explaining the Holocaust*, historian Peter Hayes observes that the adjectives most often employed in public discussions of the Shoah are *unfathomable*, *incomprehensible*, and *inexplicable*.¹⁹ Against such suggestions of unintelligibility, Hayes arrays the tools developed by historians, political scientists, and other social scientists for explaining temporally and geographically extended events. “The Holocaust,” he concludes, “is no less historically explicable than any other human experience, though the job is not easy.”²⁰

Philosophers and other readers encountering this claim may wish to know precisely what types of explanations are on offer. Whereas the explanations of physical events and processes supplied by natural scientists tend to be nomological—that is, grounded in appeals to general causal laws—social scientific explanations of large-scale crimes display a different structure. Historians and other scholars of mass atrocity do not typically seek to show that particular mass killings, forced removals, or other crimes had to occur precisely when they did, where they did, and how they did. Rather, they aim to identify social and political factors that allow attacks to proceed against certain populations and to distinguish psychological factors underlying individual participation in atrocities. The most common way of framing such explanations is to speak of factors that promote the occurrence of mass atrocities, on the one hand, and factors that constrain atrocities, on the other.²¹

One problem with this approach is that it can be difficult to determine which particular factors are most relevant in any given case. Consider the following list of factors scholars have cited in order to explain the fact that men, rather than women, predominate among perpetrators of mass atrocities:

1. The different susceptibility of men and women to peer pressure²²

2. “Entrenched gender norms and expectations” that frequently restrict women’s “opportunities to perpetrate harm”²³
3. Colonial-era policies of forced labor (*corvée*) applied solely to male subjects²⁴
4. Traditional associations between masculinity and military service²⁵
5. The preponderance of “bored young men” in refugee camps²⁶

In some cases of large-scale crimes, we can exclude one or more of these factors as inapplicable. But in most cases multiple factors retain at least a *prima facie* claim to relevance.

I do not hope to dissolve this general concern about the structure of social scientific explanations of mass atrocity. Instead, my aim is to eliminate some particular confusions arising from inadequate conceptual approaches to norms within existing explanatory theories. Historians and social scientists regularly refer to moral and social norms in their accounts of perpetration, victimization, and resistance, but they rarely state clearly how they understand those different types of norms or display a firm grasp of the distinctions between them. Legal scholars have strenuously debated the abstract question of whether legality is compatible with mass atrocity, but they have largely ignored the more mundane ways in which legal norms can help explain large-scale crimes. Finally, scholars of genocide often issue sweeping claims about the absence or inversion of norms during historical episodes of this crime, without recognizing that in many places, their own sources refute those claims. Exposing these problems and proposing alternative ways of integrating moral, legal, and social norms into explanatory accounts of mass atrocity is one major goal of this book.

I.4 The Problem of Prevention

Since the end of the Cold War, international institutions and individual nations have devoted considerable resources to the prevention of mass atrocities. Over the same period, scholars of large-scale crimes have clarified the notion of prevention itself. They have distinguished “proximate” and “structural” approaches to preventing mass atrocities.²⁷ They have contrasted “early-warning systems” with “risk-assessment” initiatives.²⁸ At the most basic level, researchers have shown that the forward-looking task of preventing mass atrocities differs substantially from the backward-looking task of explaining them.²⁹

Not all strategies for preventing large-scale crimes implicate norms directly. Military approaches to atrocity prevention emphasize the power of armed soldiers to forcibly counter specific episodes of mass killing, mass rape, or forced removal.³⁰ Proposals focusing on education or economic opportunities tend to treat norms simply as vehicles for distributing social goods.³¹ Finally, some scholars suggest that the causes of mass atrocities are so various, and the motives of perpetrators so diverse, that no effort at prevention that centers on specific moral, legal, or social norms can succeed.³²

In arguing that norms are integral to the prevention, as well as the explanation, of large-scale crimes, I do not take myself to be denying the complexity of such crimes; rather, I am affirming it. When humanitarian aid workers question the traditional rules that prescribe

neutrality during ongoing conflicts, they are asking whether fundamental moral norms require them to make a more explicit stand against atrocities. When lawyers at domestic or international tribunals prioritize prosecutions for high-level officials, their decisions reflect beliefs about how the enforcement of legal norms can help deter large-scale crimes. Finally, when schools adopt curricula that teach students to be “upstanders” (that is, to intervene against harms directed at third parties), they embrace the idea that social norms structure both everyday acts of bullying and extraordinary outbreaks of violence.

We must look to empirical research to determine what evidence supports the preventive effects claimed in each of these cases. In some areas, such as the study of bystanding, empirical inquiries are well established, but conclusions concerning preventive power remain equivocal. In other areas, such as investigations of the deterrent power of international criminal trials, only preliminary assessments are possible. One aim of this book is to establish a shared conceptual framework for scholars interested in the preventive power of moral, legal, and social norms. Another aim is to distinguish short-term, medium-term, and long-term contributions that norms can make to this end.

1.5 The Argument of This Book

Three main claims make up my argument in this book. The first is that genocide and other kinds of mass atrocity are social processes, reflecting larger social structures. The second claim is that historical cases of mass atrocity typically reflect the presence, rather than the absence, of norms. The third claim is that norms are crucial to both the explanation and the prevention of large-scale crimes.

Each of these claims cuts against common views of the causes and characteristics of mass atrocities. Studies of genocide often hypothesize the collapse of morality or the failure of legality as preconditions for violent group destruction. Some of the weightiest literary reflections on the Holocaust go further, suggesting that the very possibility of linking causes to effects broke down within the confines of Nazi concentration camps.³³

Besides the belief that genocide entails the absence or progressive disappearance of norms, there is another view of large-scale crimes that my argument contests. This is the view that such crimes generally proceed from decisions taken by state leaders in response to the requirements of instrumental rationality. This explanation of mass atrocity takes different forms in different contexts. In contexts of war, especially international armed conflicts, the decisions that military commanders or state leaders take to bomb, starve, or displace civilians may be said to reflect *Kriegsraison*, or hard-headed calculations of military necessity.³⁴ In contexts of domestic upheaval, the decision to torture or abduct citizens en masse may be said to reflect a dominant strategy of “draining the sea.”³⁵ Implicit in such accounts is the idea that norms, or at least norms that go beyond the bare requirements of instrumental rationality, have no place in explanations of mass atrocities.

I believe both of these approaches to explaining large-scale crimes fail, and for the same reason: both proceed from a desire for simplicity in explaining events that appear to defy comprehension. To those who fear that large-scale crimes are unintelligible, the theorist of

norm collapse responds that such attacks are just what we should expect when all accustomed limits on human conduct vanish. To those who claim that mass atrocities are incomprehensible, the instrumentalist responds that these crimes reflect the same calculations that spur the dredging of harbors or the enforcement of quarantines. It is commendable to offer an explanation where none appears forthcoming. But not all explanations fit the features, including the normative features, of the events in question. The view of mass atrocity defended in this study surpasses accounts based on norm collapse or instrumental calculation. To show why, I must unpack my main claims.

First, I claim that mass atrocities are social processes, reflecting larger social structures. To be a social process means to draw on the sorts of institutions, resources, and relationships that make any substantial human undertaking possible.³⁶ To reflect larger social structures means to use those institutions, resources, and relationships in ways that do not radically break with, but instead extend, prior social arrangements. When soldiers or police kidnap civilians or torture dissidents, their actions reflect capacities that also make possible the legitimate functions of armies and police forces. When the men in a community join together to kill or displace their neighbors while their wives plunder those neighbors' homes, a preexisting gendered division of labor directs the progress of violence. While I do not go so far as to say that mass atrocities are normal outgrowths of modern social arrangements, I do think that all existing societies have features that make such crimes possible and affect their course when they occur.³⁷

Second, I claim that historical cases of mass atrocity typically reflect the presence, rather than the absence, of norms. Identifying the existence of norms "in the wild" presents serious methodological challenges.³⁸ Undertaking this task for historical cases of mass atrocity compounds the difficulty. Nevertheless, basic assumptions about the nature of human agency, combined with the testimony of those who have lived through, suffered from, or perpetrated large-scale crimes, give us reason to investigate the influence of norms on such crimes. By reviewing a wide range of historical cases and focusing on salient distinctions among moral, legal, and social norms, I hope to show how norms help guide the actions of perpetrators, targets, and resisters of mass atrocities.

Third, I claim that norms are crucial to both the explanation and the prevention of large-scale crimes. I have already observed that the tasks of explanation and prevention differ in important ways. Much of the discussion in the chapters that follow is devoted to drawing out those differences. Here it may suffice to say that I believe explanations of genocide and mass atrocity must consider the conduct of individual agents, highly organized institutions, and loosely unorganized collectives—and that efforts to prevent large-scale crimes must also address each of these different levels of social reality.

1.6 Sources and Methods

Philosophers have long consulted historical cases in order to test key conceptual and normative claims. This is especially true of those philosophical subfields that focus on issues of war and peace. My strategy in this study goes beyond established philosophical uses of

history insofar as I give sustained attention to primary, as well as secondary, sources. In light of this, I shall briefly describe these sources, their value, and their limits.

Letters and diaries, reports and memoranda are the main primary sources I use in this book. Such materials have the advantage of being contemporaneous with the crimes they describe. In addition to these documentary sources, my argument draws on oral testimony offered in courtrooms, classrooms, and recording studios by survivors, witnesses, and perpetrators of atrocities. Though not contemporary with events, such testimony conveys key details about the kinds of harm involved in large-scale crimes and about the normative beliefs and attitudes of their subjects. As will become clear in the chapters that follow, I am especially interested in using these sources to spotlight moments in which historical actors reflect on relevant norms; embrace particular legal, moral, or social norms as guides to action; or else reject their authority.³⁹

The use of primary sources poses challenges well known to historians but less familiar to philosophers. Questions of authenticity cloud some documents; barriers to access at relevant archives prevent researchers from consulting others. Many primary sources that scholars of mass atrocity employ derive from documents compiled or testimonies recorded during specific legal proceedings, such as the International Criminal Tribunal for Rwanda or the International Military Tribunal at Nuremberg. The standards of evidence used in these proceedings were not identical, and they often differed substantially from the standards that historians and other scholars accept.⁴⁰ Finally, in the case of oral histories in particular, problems of memory, motivation, and context must be considered when assessing the credibility of each individual witness to atrocity.⁴¹

While primary sources are invaluable for exhibiting the historical operation of norms, this study draws more heavily on the large body of secondary scholarship on genocide and other kinds of mass atrocities. Beginning in the immediate post-Holocaust period, when scholars like Raphael Lemkin and Raul Hilberg drafted the first major studies, the crime of genocide has been analyzed from an enormous range of perspectives. Important work has also been done on the related crimes of mass killing, mass rape, and forced removal.⁴² This literature conveys essential details about the historical examples discussed in this study, ranging from the concentration camps erected in South Africa at the start of the twentieth century, through the mid-century horrors of fascism and communism, up to the atrocities observed in postcolonial societies in recent decades. At the same time, this secondary literature provides a crucial starting point for the theoretical interventions I undertake.

Specifically, I argue that the action-guiding power of norms, though assumed in most studies of genocide and mass atrocity, is rarely analyzed explicitly, and never with sufficient clarity. Few scholars draw clear distinctions among moral, legal, and social norms or recognize the different ways in which these several kinds of norms influence action before, during, and after large-scale crimes. Many scholars assert that mass atrocities proceed from inversions of moral norms, or breakdowns in legal norms, without providing proof of these dynamics. Across the various chapters of this study, I develop a more principled framework for integrating norms into the study of mass atrocity.

The account of norms I defend is grounded in the scholarship of numerous philosophers and political theorists. Comprehensive studies of norms by Robert Goodin, Geoffrey Brennan, Nicholas Southwood, and Lina Eriksson, as well as work done specifically on social norms by Cristina Bicchieri, form the backbone of my discussion. In addition, investigations of legality rooted in the mid-century work of H. L. A. Hart and Lon Fuller have informed my account of legal norms, and philosophical studies of failures of professional ethics during historical mass atrocities by Berel Lang and Jonathan Glover have aided my discussion of moral norms. Turning to a different disciplinary tradition, the work of constructivists in the field of international relations, including such leading theorists as Martha Finnemore, Kathryn Sikkink, and Alex Bellamy, has enriched my understanding of how norms function in international politics. Studies of specific norms by Tuba Inal, Phil Orchard, Richard Price, and Karisa Cloward underpin my arguments about the constraining power of legal norms. Finally, the work of philosophers and legal scholars such as Ruti Teitel, Colleen Murphy, and Larry May on transitional justice has been critical to my understanding of the aftermath of large-scale crimes. Strengthening the connections among these various branches of scholarship is an important secondary aim of this study, as will be seen in my chapter summaries.

I.7 Chapter Summaries

Chapter 1 sets out the basic theory of norms employed in this study and addresses some fundamental questions about the power of norms to explain and constrain large-scale crimes. I first distinguish my conception of norms from mere statistical regularities or behavioral patterns, focusing instead on agents' practical commitments and normative attitudes. Next, I describe my strategy for differentiating moral, legal, and social norms on the basis of salient distinctions in the ways such norms appear within the practical point of view. Briefly, I argue that (1) moral norms are *not* grounded in real or perceived social practices and are *not* subject to standing procedural rules governing their creation, modification, or elimination, whereas (2) legal norms *are* grounded in real or perceived social practices and *are* subject to standing procedural rules governing their creation, modification, or elimination, while (3) social norms *are* grounded in real or perceived social practices but are *not* subject to standing procedural rules governing their creation, modification, or elimination. These distinctions, discussed in more depth below, are schematically represented in [table I.1](#).

Table I.1

Salient Distinctions among Moral, Legal, and Social Norms

	Practice Grounded	Governed by Standing Procedural Rules
Moral norms	No	No
Legal norms	Yes	Yes
Social norms	Yes	No

Turning to the substantive aims of this study, the second half of chapter 1 defends three assumptions underlying any effort to exhibit the influence of norms on large-scale crimes. The first is that it is possible reliably to identify differences in the norms accepted by individuals across two or more places or moments in time. The second is that norms have a nonreducible power to guide the actions of individuals and pattern the conduct of groups. The third is that it is possible to pinpoint specific mechanisms by which changes in norms have been, or might be, achieved.

Chapter 2 shows how moral norms help explain genocide and mass atrocity. Moral norms, I argue, are distinguished from legal and social norms by their independence from real or perceived social practices, combined with the absence of standing procedural rules governing their emergence, modification, or elimination. The chapter first examines the widespread scholarly view that mass atrocities proceed from an inversion of preexisting moral norms among perpetrators. Against this thesis, I argue that processes of norm evasion and norm erosion are more useful for explaining most cases of individual participation in large-scale crimes. I illustrate my account of the erosion of moral norms by discussing historical cases of demoralization and brutalization before and during mass atrocity. I illustrate my account of the evasion of moral norms by considering how techniques of euphemism and dehumanization obscure the immorality of such crimes. In the final section of the chapter, I consider whether professional complicity in mass atrocities provides conclusive evidence of inversions in moral norms.

Chapter 3 assesses how moral norms assist in preventing large-scale crimes. I begin by

describing a special class of moral norms against deliberation, or norms that morally prohibit even thinking about performing certain actions or calculating the costs of doing so. I next consider the significance of moral norms against deliberation for individuals specially trained to perform violent acts: soldiers serving in regular armies or irregular armed groups. After describing traditional just war principles that aim to shape the deliberative agenda for soldiers and commanders considering various courses of conduct in war, I introduce alternative principles proposed by so-called revisionist just war theorists and show that these proposals stem largely from a concern to prevent mass atrocities. In the second part of the chapter, I turn to another set of agents active on the front lines of large-scale crimes: humanitarian aid workers. Reviewing recent debates about the adequacy of the traditional humanitarian principles of impartiality and neutrality, I show that these debates equally reflect a concern for atrocity prevention. The chapter concludes by critically evaluating philosopher Jonathan Glover's account of the moral resources that might empower ordinary citizens to take an active part in preventing mass atrocities.

Chapter 4 examines the power of legal norms to help explain large-scale crimes. Legal norms are distinguished from moral and social norms by their grounding in real or perceived social practices, combined with the existence of standing procedural rules governing their emergence, modification, or elimination. One long-running debate within Anglo-American jurisprudence concerns the question of whether the rule of law can be upheld even during mass atrocities. While such debates usually focus on the validity of legal norms in contexts where mass atrocities occur, I argue that we should consider the broader range of roles that legal norms play in the etiology of large-scale crimes. Legal norms contribute to the creation of invidious social categories; the progressive marginalization and persecution of persons placed in those categories; the restriction of information concerning such marginalization and persecution; and the closure of escape routes that might otherwise provide a final refuge from mass atrocity. In light of their contributions to such social transformations, I conclude that legal norms play a crucial role in creating conditions for large-scale crimes. At the same time, these norms provide a privileged source of evidence for scholars of mass atrocities.

Chapter 5 addresses the value of legal norms as constraints on mass atrocities. I first briefly survey the many laws and legal institutions developed during the twentieth century in response to large-scale crimes. Here I distinguish efforts aimed at preventing such crimes from occurring in the first place from efforts designed to save victims or deter perpetrators once those crimes are underway. Next, I consider the argument that legalization, that is, the development of legal norms that are highly precise, obligatory, and delegated, is necessary for law to effectively constrain mass atrocities. While this argument is plausible for societies that are not currently threatened by large-scale crimes, it fails to capture the needs of societies undergoing transitions in the wake of such crimes. Building on Colleen Murphy's recent study of such societies, and particularly her analysis of the circumstances of transitional justice, I show that these circumstances commonly require departures from the precision, obligation, and delegation of relevant laws. Rather than reflecting an unwillingness to use law to prevent mass atrocities, such departures may be defended precisely in these

terms.

Chapter 6 introduces the third major category of norms considered in this study, namely, social norms. Social norms are distinguished from legal and moral norms by their grounding in real or perceived social practices, combined with the absence of standing procedural rules governing their emergence, modification, or elimination. Such norms, I argue, contribute to large-scale crimes in two fundamentally different ways. On the one hand, preexisting social norms within particular groups or societies often influence atrocities from the moment they begin. On the other hand, novel social norms may arise once atrocities are underway, structuring subsequent patterns of perpetration, victimization, and resistance. My discussion in this chapter focuses on the first of these pathways. I am particularly concerned with exploring the role of preexisting social norms in creating and sustaining gender-based patterns of violence during large-scale crimes. Preexisting gender norms do much to explain the profiles of perpetrators during large-scale crimes, as I argue. They also help determine the specific types of harms that targeted individuals and groups suffer and the strategies for escape that they pursue.

Chapter 7 explores the power of social norms to help prevent mass atrocities. The chapter begins by rebutting a common misconception about rescuers during atrocities, according to which such individuals are comparatively insensitive to social norms. While social norms in fact play an important part in guiding rescuers' decisions and actions, I argue that rescue is of limited significance for thinking about atrocity prevention. Next, I examine how the elimination of existing social norms within particular populations can help constrain large-scale crimes. Focusing on three kinds of social norms prescribing silence about past or ongoing atrocities, I distinguish three means by which these "bad" norms can be disrupted. Finally, I turn to consider how the intentional creation of new social norms can help prevent mass atrocities. My discussion centers on the example of social norms prohibiting incitement to atrocities. These norms avoid many of the objections that legal prohibitions on this form of expression commonly encounter. At the same time, a social norm against incitement might spread more rapidly within particular societies through the influence of norm leaders. The chapter concludes by considering the future prospects of social norms as tools for atrocity prevention and by restating the need to unite moral, legal, and social norms in this cause.

Notes

1. See Eric Weitz, *A Century of Genocide: Utopias of Race and Nation* (Princeton, NJ: Princeton University Press, 2003); Christian Gerlach, *Extremely Violent Societies: Mass Violence in the Twentieth-Century World* (Cambridge: Cambridge University Press, 2010); Dan Stone, ed., *The Historiography of Genocide* (New York: Palgrave-Macmillan, 2008); James Waller, *Becoming Evil: How Ordinary People Commit Genocide and Mass Killing* (New York: Oxford University Press, 2002); George Mastroianni, *Of Mind and Murder: Towards a More Comprehensive Psychology of the Holocaust* (New York: Oxford University Press, 2019); Ervin Staub, *The Roots of Evil: The Origins of Genocide and Other Group Violence* (Cambridge: Cambridge University Press, 1992); Harald Welzer, *Täter: Wie aus ganz normalen Menschen Massenmörder werden* (Frankfurt: Fischer Verlag, 2007); Kristen Renwick Monroe, *Ethics in an Age of Terror and Genocide* (Princeton, NJ: Princeton University Press, 2012); Benjamin Valentino, *Final Solutions: Mass Killing and Genocide in the 20th Century* (Ithaca, NY: Cornell University Press, 2005); Scott Straus, *The Order of Genocide* (Ithaca, NY: Cornell University Press, 2006); Mahmood Mamdani, *When Victims Become Killers: Colonialism, Nativism, and the Genocide in Rwanda* (Princeton, NJ: Princeton University Press, 2001); Barbara Harff, "No Lessons Learned from the Holocaust? Assessing Risks of

Genocide and Political Mass Murder since 1955,” *American Political Science Review* 97, no. 1 (2003): 57–73; Helen Fein, *Genocide: A Sociological Perspective* (London: Sage, 1993); Christopher Powell, *Barbaric Civilization: A Critical Sociology of Genocide* (Montreal: McGill–Queen’s University Press, 2011).

2. Alexander Laban Hinton, “The Dark Side of Modernity: Toward an Anthropology of Genocide,” in *Annihilating Difference: The Anthropology of Genocide*, ed. Alexander Hinton (Berkeley: University of California Press, 2002); Charles Anderton and Jurgen Brauer, eds., *Economic Aspects of Genocides, Other Mass Atrocities, and Their Prevention* (New York: Oxford University Press, 2016); Thomas Pegelow Kaplan, *The Language of Nazi Genocide: Linguistic Violence and the Struggle of Germans of Jewish Ancestry* (Cambridge: Cambridge University Press, 2009); Marguerite Feitlowitz, *A Lexicon of Terror: Argentina and the Legacies of Torture* (New York: Oxford University Press, 1998).

3. This approach accords with the account of norms recently set out by philosopher Neil Roughley, who writes, “Understanding norms is a two-way process, involving a close interaction between conceptual clarification and empirical research.” See Neil Roughley, “Might We Be Essentially Normative Animals?” in *The Normative Animal? On the Anthropological Significance of Social, Moral, and Linguistic Norms*, ed. Neil Roughley and Kurt Bayertz (New York: Oxford University Press, 2019), 3.

4. Nicholas Southwood, “The Moral/Conventional Distinction,” *Mind* 120, no. 479 (2011): 761–802; Cristina Bicchieri, *The Grammar of Society* (Cambridge: Cambridge University Press, 2006); Edna Ullman-Margalit, *The Emergence of Norms* (Oxford: Clarendon Press, 1977); Geoffrey Brennan, Robert Goodin, Nicholas Southwood, and Lina Eriksson, *Explaining Norms* (New York: Oxford University Press, 2013).

5. On this point, my account parallels the approach taken by philosopher Claudia Card, who “begins from the premise that atrocities are paradigmatic evils.” My project differs from Card’s insofar as my focus is not on the concept of evil but on the accepted norms that make atrocities possible and the prospective norms that might help prevent them. Claudia Card, *Confronting Evils: Terrorism, Torture, Genocide* (Cambridge: Cambridge University Press, 2010), 14.

6. Raphael Lemkin, *Axis Rule in Occupied Europe* (Washington, DC: Carnegie Endowment for International Peace, 1944), 79.

7. Specifically, the Convention limits legally recognizable targets of genocide to “national, ethnical, racial or religious group[s].” UN Convention on the Prevention and Punishment of the Crime of Genocide, adopted December 9, 1948; entered into force January 12, 1951. Article II.

8. See, e.g., Deborah Mayersen, *On the Path to Genocide: Armenia and Rwanda Reexamined* (New York: Berghahn Books, 2014), 10.

9. For a good overview of this issue, see Uğur Üngör, “Cultural Genocide,” in *The Routledge History of Genocide*, ed. Cathie Carmichael and Richard Maguire (New York: Routledge, 2015), 241–253. For a clear discussion of the place of norms in current anthropological notions of culture, see Christoph Antweiler, “On the Human Addiction to Norms: Social Norms and Cultural Universals of Normativity,” in Roughley and Bayertz, *Normative Animal*, 83–100.

10. Lemkin, *Axis Rule*, 87–89.

11. This is the number employed, for example, by the Early Warning Project run by the Simon-Skjodt Center for the Prevention of Genocide at the United States Holocaust Memorial Museum. See http://www.earlywarningproject.com/risk_assessments. Most quantitative approaches stipulate a period of twelve months as the relevant time span for aggregating civilian deaths.

12. Scott Straus, “What Is Being Prevented? Genocide, Mass Atrocity, and Conceptual Ambiguity in the Anti-Atrocity Movement,” in *Reconstructing Atrocity Prevention*, ed. Sheri Rosenberg, Tibi Galis, and Alex Zucker (Cambridge: Cambridge University Press, 2016), 26–27. The qualifier “particularly vulnerable” seeks to capture the fact that scholars of mass atrocity are especially concerned with assaults on noncombatants, or on combatants who have been rendered hors de combat. For critical discussion of the distinction between combatant and noncombatant in international law and politics, see Helen Kinsella, *The Image before the Weapon: A Critical History of the Distinction between Combatant and Civilian* (Ithaca, NY: Cornell University Press, 2011).

13. Some might suspect that by adopting a qualitative definition of *mass atrocity*, I am stacking the deck in favor of my argument concerning the role of norms in explaining and preventing such crimes. But this is not so. Numerous theories of large-scale crimes, including theories based on sadism, inherent evil, and cold strategic calculation, define such crimes qualitatively, while leaving little room for norms in their purported explanations.

14. Mark Osiel, *Obeying Orders: Atrocity, Military Discipline and the Laws of War* (New Brunswick, NJ: Transaction, 1998), 45, cited in David Scheffer, “Genocide and Atrocity Crimes,” *Genocide Studies and Prevention* 1, no. 3 (2006): 338. See also Julien Théry, “*Atrocitas/enormitas*: Pour une histoire de la catégorie ‘d’ énormité’ ou ‘crime énorme’ du Moyen Âge à l’époque moderne,” *Clio@Themis: Revue électronique d’histoire du droit* 4 (2011): 5–7.
15. Paul Morrow, “A Theory of Atrocity Propaganda,” *Humanity* 9, no. 1 (2018): 45–62.
16. Powell, *Barbaric Civilization*, 33–36, 75–80.
17. Legal scholar David Scheffer advocates *atrocity crimes* as a collective term for offenses now distinguished in law as genocide, crimes against humanity, and war crimes. He claims that this collective term is better suited to “selling to the public the credibility and utility” of international criminal prosecutions, and can enhance the “accuracy and integrity” of those proceedings. In previous work, I have criticized Scheffer’s proposal for placing too much weight on the need to speed public consent for military interventions. Here, I follow James Waller, who favors *mass atrocity* over *atrocity crimes* due to the greater “coherence and simplicity” of this term, as well as the fact that it is already “widely embraced.” See Scheffer, “Genocide and Atrocity Crimes,” 244; Morrow, “Atrocity Propaganda,” 55–56; James Waller, *Confronting Evil: Engaging Our Responsibility to Prevent Genocide* (New York: Oxford University Press, 2016), 113–114.
18. The reverse need not be true, of course. Many crimes are large scale but not atrocities.
19. Peter Hayes, *Why? Explaining the Holocaust* (New York: Norton, 2017), xiii.
20. Hayes, *Why? Explaining the Holocaust*, xiv.
21. This sketch necessarily simplifies the distinction between law-governed and non-law-governed explanations. For extended discussion and a variety of viewpoints, see the essays collected in Harold Kincaid, ed., *The Oxford Handbook of Philosophy of Social Science* (New York: Oxford University Press, 2012).
22. Waller, *Becoming Evil*, 265.
23. Evelyn Gertz, Hollie Nyseth Brehm, and Sara Brown, “Gender and Genocide: Assessing Differential Opportunity Structures of Perpetration in Rwanda,” in *Perpetrators and Perpetration of Mass Violence*, ed. Timothy Williams and Susanne Buckley-Zistel (London: Routledge, 2018), 135.
24. Mayersen, *On the Path*, 107.
25. Adam Jones, “Gendercide and Genocide,” in *Gendercide and Genocide*, ed. Adam Jones (Nashville, TN: Vanderbilt University Press, 2004), 1–38.
26. Sarah Kenyon Lischer, *Dangerous Sanctuaries: Refugee Camps, Civil War, and the Dilemmas of Humanitarian Aid* (Ithaca, NY: Cornell University Press, 2006), 37–38.
27. Cf. Rosenberg et al., *Reconstructing Atrocity Prevention*, 7.
28. Ernesto Verdeja, “Predicting Genocide and Mass Atrocities,” *Genocide Studies and Prevention* 9, no. 3 (2016): 13–32.
29. Rosenberg et al., *Reconstructing Atrocity Prevention*, 6.
30. Dwight Raymond, “Military Means of Preventing Mass Atrocities,” in *Reconstructing Atrocity Prevention*, ed. Rosenberg et al., 295–318. For the idea of “justified interdiction” to prevent mass atrocities, see David Rodin, “The Myth of National Self-Defense,” in *The Morality of Defensive War*, ed. Cécile Fabre and Seth Lazar (New York: Oxford University Press, 2014), 89.
31. Elisa von Joeden-Forgey, “Gender, Sexualized Violence, and the Prevention of Genocide,” in *Reconstructing Atrocity Prevention*, ed. Rosenberg et al., 146.
32. Gerlach, *Extremely Violent Societies*, 2010.
33. Primo Levi, *Survival in Auschwitz* (New York: Touchstone, 1996); Lawrence Langer, *Holocaust Testimonies: The Ruins of Memory* (New Haven, CT: Yale University Press, 1993).
34. Jens David Ohlin and Larry May, *Necessity in International Law* (New York: Oxford University Press, 2016), 86.
35. Benjamin Valentino, Paul Huth, and Dylan Balch-Lindsay, “‘Draining the Sea’: Mass Killing and Guerrilla Warfare,” *International Organization* 58, no. 2 (2004): 375–407.
36. Compare Daniel Feierstein, *Genocide as Social Practice: Reorganizing Society under the Nazis and Argentina’s Military*

Juntas (New Brunswick, NJ: Rutgers University Press, 2014).

37. Holocaust historians will see in this claim tinges of the debate between “intentionalist” and “functionalist” interpretations of the Shoah—the debate about whether the extermination of European Jews proceeded from a conscious plan or from the undirected working of bureaucratic processes. Like most other contemporary scholars of large-scale crimes, I believe this debate presents a false choice. The Holocaust, like other twentieth-century mass atrocities, reflected both intentional action and bureaucratic functioning. For an overview of this debate, see Tom Lawson, *Debates on the Holocaust* (Manchester: University of Manchester Press, 2010), chap. 4.

38. Cristina Bicchieri, *Norms in the Wild: How to Diagnose, Measure, and Change Social Norms* (Oxford: Oxford University Press, 2017).

39. Some readers might worry that this use of primary sources is too selective, providing at best anecdotal evidence for my claims about norms rather than definitive proof. This objection misunderstands the place this study occupies in the scholarly division of labor concerning large-scale crimes. My goal is to provide a conceptually rigorous, analytically capacious account of norms, suitable for use by historians, sociologists, and other scholars undertaking more finely grained studies of specific historical cases of large-scale crimes. The letters, diary entries, and oral testimonies that I analyze are intended to show that this account of norms is not merely a philosophical construct but reflected in the practical deliberations of individuals caught up in various instances of twentieth century mass atrocities.

40. Richard Ashby Wilson, *Writing History in International Criminal Trials* (Cambridge: Cambridge University Press, 2011).

41. Noah Shenker, *Reframing Holocaust Testimony* (Bloomington: Indiana University Press, 2015).

42. This literature is too large to sum up in a single note. Readers eager to know what texts and authors my argument engages may consult the list of works cited at the end of this study.