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Introduction

"I stand before you to awaken the conscience of the world, and to arouse the voice of the international community," declared Minister of Justice Abubacarr Tambadou, opening The Gambia's case against Myanmar at the International Court of Justice (ICJ) in 2019. "Another genocide is unfolding right before our eyes, even as I make this statement to you today. Yet we do nothing to stop it. This is a stain on our collective conscience and it will be irresponsible for any of us to simply look the other way and pretend that it is not our business because it *is* our business."[1] Fourteen years earlier, at the 2005 United Nations (UN) World Summit, states unanimously agreed that they share a responsibility to protect people the world over from genocide and other atrocities. The UN Security Council reaffirmed this agreement repeatedly over subsequent years.[2] And yet, when Myanmar government forces and local militias launched "clearance operations" in Rakhine State in 2017, killing at least ten thousand Rohingya Muslims and forcing more than seven hundred thousand to flee to Bangladesh, the international community failed to act.[3] The Security Council did not adopt a single resolution condemning the atrocities, much less authorize measures to bring them to an end and to ensure the protection of civilians. It was left to The Gambia, a small West African state that had itself only recently emerged from the twenty-two-year presidency of Yahyah Jammeh that was marked by violations of rights and threats of atrocities, to bring a case to the ICJ accusing Myanmar of genocide and seeking an order for provisional measures to protect the Rohingya.

This book examines the idea that states share responsibilities for the protection of people beyond their borders from atrocities. We are often told that this is a new idea, conceptualized as the responsibility to protect (R2P) at the beginning of this century. While histories of humanitarian intervention and human protection proliferate, we are nevertheless told that states until recently conceived and claimed—or denied—merely a *right* to protect distant vulnerable people. States were not thought to be burdened by any obligation to care for strangers when they did not want to.[4] But this is false. When justifying action taken to protect people beyond borders, or when exhorting others to act, states have almost always deployed the language of responsibility, of duty, of obligation, of an imperative to love their neighbor, to uphold justice, and to defend the interests of humanity.

Political leaders, moreover, have long engaged with this idea of a responsibility to protect in ways that are familiar to us today. We will see that they have at times put it into practice with a measure of integrity and at other times knowingly manipulated and abused it. Compare for example Britain's costly nineteenth-century efforts to abolish the slave trade with Leopold II's brutal administration of the Congo at the end of that century, both of which were justified in terms of the duties of humanity. Some have sought to dilute expectations for action by claiming that duties toward outsiders are outweighed by national interests, while others have sought to bolster popular support for action by asserting a convergence of duties and interests. This was a feature of the famous dispute between Benjamin Disraeli and W. E. Gladstone, current and former prime minister, concerning how Britain should respond to atrocities against Bulgarian Christians in the 1870s. Leaders have also often highlighted how protection obligations ought to be shared among states, sometimes seeking to persuade other states to contribute to protection efforts, as Frederick William I of Brandenburg-Prussia did on behalf of vulnerable Protestants in Nassau-Siegen in 1710, and sometimes hoping to shift blame for a failure to protect onto those who impede effective action, as British prime minister Lord Salisbury did in the context of atrocities against Armenians in the 1890s. In some instances, responsibilities for the protection of the vulnerable beyond borders have even been written into the mandates of international institutions and codified in international law. We find this as early as the Peace of Westphalia in 1648, which, far from establishing a right of states to freedom from external interference, as myth would have it, actually bound contracting parties to peacefully and, if necessary, forcefully protect the religious liberty of individuals in the princely states of the Holy Roman Empire. We hear echoes of each of these efforts to

perform, abuse, negotiate, evade, and codify responsibilities beyond borders in the global politics of human protection today.

This is not to say that there have not been real and significant changes over time. There have been. For starters, in previous centuries, responsibilities for extraterritorial protection were commonly constructed and claimed by an exclusive club of European powers and imposed upon particular communities and peoples outside the club. For all the inequities and hypocrisies that continue to mark the politics of human protection today, it is noteworthy that *all* states have agreed that they share a responsibility to protect, described at the 2005 World Summit as a responsibility to encourage and help each other prevent atrocities and to take timely and decisive action—peaceful if possible, coercive if necessary—to put an end to atrocities when they break out.[5]

But whatever the successes of international efforts this century to act on these commitments and to more consistently and effectively protect people from atrocities—and I argue that there have been such successes—the project of human protection is in crisis today as multiple forces push against the commitment of states to protect the vulnerable beyond borders. Rising populist nationalism in many Western states, not least the United States, sees them turning their backs on global responsibilities that they have long championed at least in word, if not always in deed. Increasing weariness of Western hypocrisy emboldens other states, not least Russia, to resist whatever efforts the West continues to muster to shame them into facilitating the protection of strangers. And rising confidence of non-Western powers, not least China, leads them to more brazenly challenge prevailing notions of global rights and responsibilities, the application of which by Western powers in recent years has so often revived traumatic and humiliating memories of imperialist interventionism beyond the West. Rohingya civilians suffer as a result. So too do Yemeni, Syrian, and Congolese civilians, and many others besides.

How might we think through this crisis of abandoned responsibilities? Should we even conceive it as a crisis given how often such responsibilities have been mishandled? It will prove useful to begin with a historical question: how have theorists and practitioners derived and discharged, contested and evaded, and manipulated and abused responsibilities for the protection of the vulnerable beyond borders in the past? Armed with answers to that question, we can derive richer and more robust answers to crucial questions about the responsibility to protect today than we can when we overstate the novelty of this responsibility and occlude its history. Questions to be asked

include these: How should the responsibility to protect be shared among states to ensure that populations are consistently and effectively protected without placing unfair burdens on particular states and without opening the door to abuse? To what extent might these shared responsibilities be made legally binding? To what extent have states actually embraced their shared responsibilities? And what, if anything, might lead them to take up their shared responsibilities more responsibly, more consistently, and more effectively? Confronted as we are today with atrocity crises that are killing hundreds of thousands of civilians and wounding, displacing, and traumatizing many millions more, these questions are as urgent as they have ever been. Answering them is the task of this book.

Five Lenses for Viewing the Responsibility to Protect

The book looks at the shared responsibility to protect through five different lenses in order to answer these questions. The lenses are (1) the history of international thought, (2) the history of international practice, (3) international ethics, (4) international law, and (5) international politics. I devote a chapter to each. All of these lenses represent fields of research that have in different ways been undergoing something of a turn (or more precisely a return) from a focus on rights to a focus on responsibilities in recent years, or at least a reinvigorated engagement with how the fulfilment of rights requires the identification and assignation of responsibilities, and the book makes a contribution to each of these "turns" in the process of contributing to our understanding of R2P.[6]

However, as becomes clear as we move through the book, these five perspectives on responsibilities are closely related and in some respects inseparable. We are more likely to produce poor answers to ethical questions about whether and when military intervention is required and who in particular should undertake the intervention, for example, if we neglect to grapple with the history of powerful states justifying the forcible subjugation of weaker others in languages of a duty to protect and civilize the tyrannized and the barbaric. A deeper understanding of each field of research helps enrich our understanding of each of the others, leading to a fuller understanding of the possibilities, limits, and hazards of shared responsibilities for human protection.

I was prompted to write the book in part by frustration with existing treatments and prevailing assumptions about each of these five perspectives. I deal more fully with these faulty treatments and assumptions in

the chapters that follow. For now, let us consider just one example: Rajan Menon's recent, prominent, and relentlessly skeptical book *The Conceit of Humanitarian Intervention*.[7] This thoughtful and engaging work, which focuses on the military interventionist aspect of R2P, utilizes each of the five lenses at different points, but in each instance reproduces pervasive myths and misunderstandings that scholars and commentators have embraced for too long.

In Menon's hands, the *history of international thought* regarding the moral obligation to intervene is reduced to Hugo Grotius's famous seventeenth-century defense of a mere *right* of intervention, failing to recognize that the Dutchman actually prioritized considerations of reason of state over the care of vulnerable foreigners, whereas numerous other theorists both before and after him argued in favor of weighty *duties* to intervene to assist and rescue people beyond borders.[8] Menon's treatment of the *history of international practice* is grounded in the long-demolished myth that the Peace of Westphalia established a principle of nonintervention, hampering his ability to draw appropriate lessons from practices of intervention across the centuries that followed.[9] And his discussion of *international ethics* is marred by the fact that he argues both that intervention to protect the vulnerable does not work and also that states do not intervene enough, unintentionally imitating the opening joke of Woody Allen's *Annie Hall* about two elderly women complaining both that the food at their resort is terrible and also that the portions are so small.[10]

Menon's treatment of *international law* focuses on the tired question of whether there is a *right* of military intervention in the absence of UN Security Council authorization.[11] This is understandable given that some Western governments have an uncanny knack for finding lawyers willing to make the case for such a right when needed. But the vast weight of legal scholarship has long been against this right, and in rehearsing this scholarship, Menon neglects to grapple with the live and pressing issue of whether efforts to protect populations beyond borders, where legally permissible, are also legally *obligatory*. Finally, his discussion of *international politics* proceeds from the blunt claim that states will always act in their own interests, ignoring a wealth of research demonstrating that these interests themselves are socially constructed and subject to change and that they both can and often do include an interest in caring for vulnerable outsiders.[12]

I correct each of these myths and misunderstandings over the course of the book. But correcting the claims of others is only a minor aim. More importantly, I "think with history" in order to help us understand the

present-day shared responsibilities of states to protect the vulnerable beyond their borders.[13] I engage with past ideas and practices for three purposes: first, to clarify precisely what, if anything, is novel about present ideas and practices regarding responsibilities for human protection; second, to retrieve forgotten or neglected ways of thinking about responsibilities that can help us understand the possibilities, limits, and hazards of protection (including three senses of "imperfection" that I outline in a moment); and third, to appreciate the implications of past uses and abuses of protection responsibilities, such as the ethical obligations produced by historical abuse and the traumas and temptations of abuse that continue to mark the politics of protection.

I am conscious that the book wrestles with a number of questions and concepts that were unfamiliar to past theorists and practitioners. In order to control for *some* anachronism and to limit the distortion of the past, I seek first, in chapters 1 and 2, to carefully depict historical arguments and actions as they were understood by the people involved. Only then, with these contextualized historical materials in hand, do I turn to think about present-day ethics, law, and politics in chapters 3, 4, and 5. Other than a few moments when it seems useful to help orient the reader, I refrain in the first two chapters from noting how the historical material relates to the discussions of the present-day that follow. That said, while I strive to not impose present understandings on past ideas and practices, I am aware that, in zeroing in on past constructions and performances of protection responsibilities in the first two chapters, my selection and presentation of historical material is shaped by presentist concerns. My hope is that such moderate anachronism proves useful for helping us think about the debates and dilemmas about human protection that confront us today.[14]

I outline the findings and arguments of each chapter shortly. Let me first detail one broad contribution of the book that cuts across all chapters and that helps us better understand not only R2P but international responsibilities more generally, which is an explication of the many implications of the fact that the responsibility to protect is rightly understood as an "imperfect" responsibility.

An Imperfect Responsibility

Since the end of the Cold War, there has emerged a large body of research examining the development and impact of a range of human-rights-based international norms. Most of these norms entail "negative" duties. That is,

they require states to refrain from certain behaviors. Examples include duties to *not* engage in practices of slavery,[15] colonialism,[16] or apartheid,[17] and duties to *not* use chemical weapons,[18] nuclear weapons,[19] or land mines.[20] Violation of each of these duties involves doing something that is almost universally condemned. States tend to be fully capable of complying with these duties in all instances. Violation, therefore, is always inexcusable and commonly subject to social sanction and even material punishment. As such, these negative duties are also known as "perfect" duties.

In contrast, R2P entails a "positive" duty. That is, rather than a duty to refrain from doing something abhorrent, it is a duty to do something good. It requires that states take action on behalf of the international community to protect vulnerable people beyond their borders. When we think carefully about what is required of any individual state, we find that this positive duty is "imperfect" in three different senses. Recognition of these imperfections helps us to more rightly grasp the nuances of the ethics, law, and politics of R2P, and to better calibrate our expectations.

We can understand the three senses of imperfection through the works of three historical thinkers whom we get to know in chapter 1: Samuel Pufendorf, Emer de Vattel, and Immanuel Kant. We find in chapters 2 and 5 that each sense of imperfection has marked the politics of human protection for centuries and continues to do so today.

The first sense of imperfection was first articulated by Pufendorf in the late seventeenth century: the duty to care for those beyond borders is imperfect because it is rightly subject to the judgment of each state, which needs to weigh the costs and risks of protecting outsiders against the duty to care for the well-being and interests of its own population.[21] Political leaders often appeal to this idea even if they do not speak in terms of imperfect duties. Disraeli, for example, justified his refusal to intervene on behalf of persecuted Bulgarians in the Ottoman Empire on the grounds that the duties Britain owed to vulnerable foreigners were at that moment trumped by the duty "to maintain the Empire of England."[22] Likewise, more recently, US president Barack Obama responded to pressure to do more to protect vulnerable Syrians by insisting that his job as president was to measure efforts in Syria "against my bottom line, which is what's in the best interest of America's security."[23]

The second sense of imperfection was alluded to by Vattel in the mid-eighteenth century: while every person may have a right to be protected from atrocities, the duty to ensure such protection when a host government is unable or unwilling to provide it falls on no particular state.[24] We see that

several British leaders deployed this idea in the nineteenth century, rejecting calls for greater efforts to protect vulnerable Christians in the Ottoman Empire on the grounds that Britain did not have a "special" or "peculiar" responsibility that fell more heavily on them than any of the other European powers. More recently, both Obama and US president Donald Trump have lamented the unwillingness of other states "to put any skin in the game" and to share with the United States the burden of responsibility for responding to crises of human protection.[25]

The third sense of imperfection is extrapolated from Kant's late eighteenth-century discussion of duties of virtue: given that the international community will usually be confronted with multiple situations involving the threat or perpetration of atrocities, each state that seeks to discharge its duties has a "playroom for free choice," meaning they have freedom to choose whom in particular they should protect and what measures they should use to protect them.[26] This idea has long been echoed by leaders seeking to dilute pressure for a stronger response to a particular crisis. Queen Victoria, for example, queried why the Bulgarians were supposed to be more deserving of England's assistance than any other vulnerable people, "as if they were more God's creatures and our fellow-creatures than every other nation abroad."[27] More recently, Obama asked, "How do I weigh tens of thousands who've been killed in Syria versus the tens of thousands who are currently being killed in the Congo?"[28]

While the Pufendorfian dilemma of how to weigh duties to others against duties to oneself and the Vattelian dilemma of who among many should do the protecting in a given situation have received a reasonable amount of attention from moral philosophers in recent years, the Kantian dilemma of who among many should be protected by a given state has been almost entirely neglected. Theorists have tended to proceed on the assumption that the world is confronted with only a single atrocity crisis at a time and that our task is to identify which state or states bear responsibility for responding on behalf of the international community. This has severely hampered the development of ideas about how to work toward optimal coverage in the protection of civilians the world over from atrocities. When we place the Vattelian (who should protect?) and Kantian (who should be protected?) senses of imperfection alongside each other, it becomes clear that the answers to each need to be woven together. The responsibility to protect needs to be shared. I pursue this idea in chapter 3 and explain how the imperfections identified by Vattel and Kant might be overcome. This involves the identification of guiding principles for the fair and efficient distribution of responsibilities

among states, so that the plurality of threatened and actual crises confronted at a given time can be adequately addressed insofar as is possible.

When first developing the idea of imperfect duties, Pufendorf explained that a fundamental implication of the fact that a duty is imperfect is that states cannot be compelled to perform it.[29] States are at liberty to judge for themselves what they can contribute to the protection of vulnerable strangers and should be considered answerable to no one else. We find politicians, from British Leader of the House Arthur Balfour in the nineteenth century through to US ambassador to the UN John Bolton in the twenty-first century, making use of such an idea, seeking to dilute expectations for humanitarian intervention by emphasizing that the imperative to protect beyond borders is a moral rather than legal responsibility. In chapter 4, I examine how the ICJ and the International Law Commission (ILC) have tried to "perfect" this responsibility in recent years in the sense of making it legally enforceable, by codifying extraterritorial obligations for the prevention of atrocity crimes. I argue, however, that such codification can never be fully coherent until the international community "perfects" its answers to the Vattelian question of who among many should act and the Kantian question of who among many should be protected. This requires much more substantial institutionalization of the distribution of global obligations than presently exists.

Some skeptical observers point to the absence of more comprehensive legal codification as evidence that the R2P norm cannot have a meaningful impact on the behavior of states.[30] However, we see in chapters 2 and 5 that, even in the absence of legal enforceability, the felt imperative to protect beyond borders does at times move states to make meaningful efforts, individually and collectively, to care for strangers. The imperfect and shared nature of the responsibility generates opportunities for problematic buck passing and opportunistic (even if often justifiable) blame shifting, but also creative burden sharing and courageous action for the sake of the distant vulnerable.

Overview of the Book

The book begins with two chapters that examine the intellectual and diplomatic histories of duties of protection beyond borders.[31] As noted above, I largely refrain in these chapters from looking ahead to note how past ideas and practices are similar to or different from those of the present day. To do so would risk compromising our understanding of these histories. Instead,

I seek to convey historical debates and events as they were understood by the people involved. I encourage readers to simply soak up these histories safe in the knowledge that the three chapters that follow will make good use of them to illuminate how we might best understand the ethics, law, and politics of the shared responsibility to protect today.

Chapter 1 sketches a history of thinking about the duties of states to care for vulnerable people beyond their borders. While histories of human rights have proliferated in recent years, past thinking about duties to vindicate these rights remains relatively underexplored. This is particularly the case for extraterritorial duties. I focus on one strand of theorizing—Western natural law—which has given sustained attention to such duties, producing a range of arguments and frameworks for thinking that remain influential as well as others that are largely forgotten and can reward renewed attention. I sketch multiple and disparate theories of duties beyond borders, from Francisco de Vitoria deliberating the justice of the conquest of the Americas in the early sixteenth century through to the supposed eclipse of natural law theorizing by Kant at the end of the eighteenth century. I retrieve debates waged across these three centuries about how to conceive tensions between duties to strangers and duties to one's own people. I examine how theorists comprehended not only duties of military intervention in nonconsenting states, but also duties of consensual aid and assistance. And I explore contrasting claims about the nature of these various duties and the implications of violation. This sketch provides us with important tools for probing in later chapters how states commonly perceive, and how they might more fruitfully comprehend, their shared responsibility to protect today.

Chapter 2 considers the historical practices of (mostly Western) states, focusing on how they have constructed and performed responsibilities in realms related to R2P, including humanitarian intervention, minority protection, and the colonial subjection of "backward" peoples to the supposedly beneficial rule of "civilized" powers. Covering the period from the Peace of Westphalia to the end of the Cold War, I give particular attention to key developments in the nineteenth and early twentieth centuries—an especially innovative period in the international construction of shared responsibilities due initially to the advent of great power management by European powers and subsequently the transfer of some of their managerial roles to the League of Nations. Of particular interest is how states grappled with questions about how they should share their acknowledged protection responsibilities.

The historical record is at best mixed. Constructions of responsibilities, even when aimed at assisting and protecting people beyond borders,

have typically been shaped by the interests of the most powerful states. Too often, they have been cynically manipulated to justify abuse and exploitation. Performances of these responsibilities, even when seemingly motivated by concern for vulnerable people, have commonly been marked by selectivity, hypocrisy, paternalism, and racism. Too often, they have done more harm than good. Understanding this history helps us think through the contemporary ethics, law, and politics of international human protection, enabling us, for example, to appreciate how responsibilities can be variously evaded or perverted by the powerful and to grasp both the historical traumas and the enduring temptations that continue to shape protection debates and practices.

Turning to the present, chapter 3 examines the ethics of the shared responsibility to protect. As I noted earlier, existing accounts commonly proceed on the assumption that the world is confronted with only a single atrocity crisis at a time and that our task is to identify which state or states bear the responsibility to respond on behalf of the international community. I take as my task to develop an account of the ethics of R2P fit for a world in which there are typically multiple situations involving the threat or perpetration of atrocities requiring international attention. Noting both the history of imperial abuse and the more recent failure of the 2011 intervention in Libya, the chapter begins by considering whether responsible international protection is even possible. Wrestling with postcolonial critiques of R2P, I cautiously argue that, as disastrous as the Libyan intervention turned out to be, the broader contemporary record suggests that the possibilities and opportunities for responsible international protection—both coercive and noncoercive—remain much more substantial than critics suggest. I then examine the "imperfections" inherent to the shared responsibility to protect, derived from Pufendorf (how should competing responsibilities be weighed?), Vattel (who should do the protecting?), and Kant (who should be protected?), and theorize how this imperfect responsibility might be made more "perfect" by clarifying what we should ask of states confronted with the threat or perpetration of atrocities beyond their borders. Specifically, I propose a set of principles that might fruitfully guide the fair and effective distribution of responsibilities among multiple states in response to multiple situations of concern.

Chapter 4 clarifies the legal status of the shared responsibility to protect, offering a twofold argument: extraterritorial obligations for the prevention of atrocities have become more firmly established in law in recent decades than many people realize, but these legal developments are troublingly

incoherent. The ICJ and the ILC have offered bold statements indicating that states have a legal obligation to do whatever they can to protect populations beyond their borders from atrocity crimes. The ICJ has gone so far as to say that states are obliged "to employ all means reasonably available to them, so as to prevent genocide so far as possible," regardless of where the genocide occurs.[32] These are monumental legal developments. But they are limited in three crucial respects, which stem from a failure to reckon adequately with the obligation's Pufendorfian, Vattelian, and Kantian "imperfections": there is a lack of clarity around questions of enforcement and reparation, and it is unclear how these questions could be given coherent answers; the ICJ's claim that the scope of protection obligations should be grounded in the capacities of states places an unfair burden on those that have diligently cultivated such capacities; and there is ambiguity about how a state can be legally obligated to respond to a particular atrocity crisis in a given instance since it will usually be confronted with multiple crises to which it could justifiably direct its resources. I suggest that, while recent and ongoing legal developments are certainly significant, the way forward in encouraging states to respond to the threat or perpetration of atrocities beyond their borders lies less in the further development of law than in the diffusion and internalization of social norms that lead states to accept risks and costs in protecting vulnerable outsiders. This political dimension of the shared responsibility to protect is the focus of chapter 5.

Chapter 5 tells the story of the politics of human protection in the era of R2P, explaining how the felt imperative to protect strangers from atrocities has had a real impact on the behavior of many states in recent years, while avoiding the temptation to exaggerate the historical novelty or contemporary success of the R2P norm. Reflecting on the long history of international protection explored in chapter 2, I argue that what is particularly new in the R2P era is that international engagement with atrocities has become almost a matter of routine. The international community, and especially the members of the Security Council, recognize a need to attend to not only the most prominent crises, but also those many other situations of concern that neither attract substantial media attention nor engage the strategic or economic interests of powerful bystander states. However, I also recognize that states continue to fail to adequately discharge their responsibilities in many ways. Not only do they too often fail to respond quickly enough or commit the necessary resources to protect vulnerable civilians, but they too often shield those committing atrocities and too often themselves contribute to the perpetration of these crimes. And things have been getting worse

in recent years as several states that have long provided the impetus and accepted much of the burden of responsibility for international protection efforts embrace norms of populist nationalism and abandon global responsibilities and as the growth of post-truth politics and the global exposure of great-power hypocrisies combine to weaken the potential for proponents of R2P to push other states to care better for vulnerable strangers. A brief conclusion, making further use of the idea of "imperfection" to reflect on some of the limits and possibilities of encouraging states to embrace and discharge their shared responsibility to protect, brings the book to a close.

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