

## ARTICLES

# PRIME-TIME SAVIORS: *THE WEST WING* AND THE CULTIVATION OF A UNILATERAL AMERICAN RESPONSIBILITY TO PROTECT

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### ABSTRACT

Television programs and films are powerful visual mediums that inject various interpretations about law into the public stream of consciousness and can help shape public perception on various issues. This Article argues that the popular television series *The West Wing* (“*TWW*”) cultivated the notion of a unilateral American legal obligation to intervene and protect vulnerable populations from genocide in the context of a fictional African state by mimicking some of the factual circumstances that transpired during the Rwandan genocide. In creating an idealized vision of an American response to such humanitarian crises, the show effectively attempted to re-imagine Rwanda as a beneficiary of United States military force. This Article argues that in advancing a radical vision of unilateral humanitarian military interventions, *TWW* questionably propagated metaphors and caricatures that persist in human rights discourse as criticized by Makau Mutua—namely that Western states must act as saviors rescuing vulnerable and victimized third world populations from malevolent third world dictatorships. Furthermore, such caricatures deny non-Western populations a certain subjectivity and foster the idea that Western states must always come to the rescue. In addition, these caricatures paint the international community and fellow Western states like France as unwilling or unable to respond to such crises. Lastly, this Article proposes alternative visions of how *TWW* might have presented responses to humanitarian crises by incorporating the international community and giving greater voice to local resistance.

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## I. INTRODUCTION

“Set free the oppressed, break every yoke, clothe the naked and your light shall break forth like the dawn, and the glory of the Lord shall be your rear guard.”<sup>1</sup>

We live and function in a visual age. Systems of knowledge and information are transmitted and assimilated exponentially on a daily basis through, among other things, television and film. Fortunately or unfortunately, law is one of these major systems of knowledge and information dispersed through such visual mediums. In many ways, film and television serve as primary sources of legal education and as sources of awareness about human actions and conduct that have complex legal ramifications.<sup>2</sup> Through these and other creative mediums, awareness about legal rights, issues, and subjects may enter into and remain strongly embedded in the cultural stream, thus making such awareness difficult to dislodge. As visual texts, television shows and films operate through a complex blend of metaphors, visual imagery, sound, music, dialogue, and other communicative devices that impact viewers and their understanding of the information transmitted. The more powerful these devices, the greater the possibility exists to create and nurture significant and far-reaching legal and political mythologies. In this Article, I particularly want to draw attention to and examine one type of legal mythology that was powerfully nurtured on a popular television program several years ago. I argue that through the deployment of questionable and reified metaphors embedded within the narratives of human rights discourse, the television program *The West Wing* (“*TWW*”) cultivated a particularly powerful and resonant mythology—the image of the United States possessing a unique legal and moral obligation to unilaterally intervene in humanitarian crises to stop genocide and other atrocities attendant to such crises occurring in other states—particularly those in the developing world.

For many, *TWW* hardly needs introduction. It was one of the most highly celebrated and widely viewed American television dramas of the past decade.<sup>3</sup> It featured the trials and tribulations of the fictional two-term Democratic Party Administration of President Josiah (“Jed” or the “President”) Bartlet, as he and his staff confronted the most significant legal and political issues affecting domestic<sup>4</sup> and foreign<sup>5</sup> affairs in

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<sup>1</sup> Josiah Bartlet, *TWW*'s fictional United States President paraphrasing Isaiah 58:6-10. *The West Wing: Inauguration: Over There* (NBC television broadcast Feb. 12, 2003).

<sup>2</sup> This is not to suggest that other creative mediums such as literature or music cannot and do not have an impact on social, political and/or legal thought and change. Indeed some suggest that literature can encourage understanding between bitter and entrenched enemies as in the case of the Arab-Israeli conflict. See for example, Amos Oz, Op-Ed., *Literature's Antidote to Hate*, L.A. Times, Nov. 1, 2007, <http://articles.latimes.com/2007/nov/01/opinion/oe-oz1>.

<sup>3</sup> *TWW* was featured on the National Broadcast Corporation television network from 1999 to 2006. For a list of Awards and Nominations Received by The West Wing, see [http://en.Wikipedia.org/wiki/List\\_of\\_awards\\_and\\_nominations\\_received\\_by\\_The\\_West\\_Wing](http://en.Wikipedia.org/wiki/List_of_awards_and_nominations_received_by_The_West_Wing) (last visited Sept. 27, 2009). *TWW* received numerous awards including Emmy, Golden Globe and the Screen Actors' Guild Awards. *Id.*

<sup>4</sup> These include: *The West Wing: What Kind of Day Has It Been* (NBC television broadcast May 17, 2000) (regarding domestic terrorism perpetrated by White supremacists); *The West Wing: In the Shadow of Two Gunmen Part I* (NBC television broadcast Oct. 4, 2000) (same); *The West Wing: In the Shadow of Two Gunmen Part II* (NBC television broadcast Oct. 4, 2000) (same); *The West Wing: 20 Hours in*

*America* (NBC television broadcast Sept. 25, 2002) (regarding domestic terrorism); *The West Wing: Isaac and Ishmael* (Oct. 3, 2001) (regarding suspected terrorism on United States soil by American-born visible minorities); *The West Wing: Slow News Day* (NBC television broadcast Feb. 4, 2004) (regarding reform of social security); *The West Wing: Mandatory Minimums* (NBC television broadcast May 3, 2000) (regarding national drug enforcement policy and mandatory judicial sentences); *The West Wing: The Benign Prerogative* (NBC television broadcast Jan. 14, 2004) (same); *The West Wing: Ellie* (NBC television broadcast Feb. 21, 2001) (regarding national drug enforcement policy and the legalization of marijuana usage); *The West Wing: Eppur Si Muove* (NBC television broadcast Mar. 3, 2004) (regarding federal funding for scientific research); *The West Wing: The Short List* (NBC television broadcast Nov. 24, 1999) (regarding executive appointments to the United States Supreme Court); *The West Wing: The Supremes* (NBC television broadcast Mar. 24, 2004) (same); *The West Wing: Talking Points* (NBC television broadcast Apr. 21, 2004) (regarding the impact of free trade agreements on domestic employment); *The West Wing: The Stackhouse Filibuster* (NBC television broadcast Mar. 14, 2001) (regarding health care policy and legislation); *The West Wing: 100,000 Airplanes* (NBC television broadcast Jan. 16, 2002) (same); *The West Wing: The Dover Test* (NBC television broadcast Nov. 24, 2004) (same); *The West Wing: Drought Conditions* (NBC television broadcast Feb. 23, 2005) (same); *The West Wing: 20 Hours in L.A.* (NBC television broadcast Feb. 23, 2000) (regarding flag burning); *The West Wing: In the Room* (NBC television broadcast Dec. 8, 2004) (same); *The West Wing: 20 Hours in L.A.* (NBC television broadcast Feb. 23, 2000) (regarding same-sex marriages); *The West Wing: Faith Based Initiative* (NBC television broadcast Jan. 5, 2005) (same); *The West Wing: The Portland Trip* (NBC television broadcast Nov. 15, 2000) (regarding education reform); *The West Wing: 20 Hours in America* (NBC television broadcast Sept. 25, 2002) (same); *The West Wing: College Kids* (NBC television broadcast Oct. 2, 2002) (same); *The West Wing: Opposition Research* (NBC television broadcast Jan. 12, 2005) (same); *The West Wing: King Corn* (NBC television broadcast Jan. 26, 2005) (regarding energy independence); *The West Wing: The Debate* (NBC television broadcast Nov. 6, 2005) (regarding energy independence and ethanol production); *The West Wing: Duck and Cover* (NBC television broadcast Jan. 22, 2006) (regarding energy independence, nuclear power, and public safety); *The West Wing: La Palabra* (NBC television broadcast Mar. 9, 2005) (regarding illegal immigration and border security); *The West Wing: Message of the Week* (NBC television broadcast Oct. 9, 2005) (same); *The West Wing: The Al Smith Dinner* (NBC television broadcast Oct. 30, 2005) (regarding the abortion debate); *The West Wing: The Indians in the Lobby* (NBC television broadcast Nov. 21, 2001) (regarding aboriginal land claims); *The West Wing: Five Votes Down* (NBC television broadcast Oct. 13, 1999) (regarding gun control); *The West Wing: War Crimes* (NBC television broadcast Nov. 7, 2001) (same); *The West Wing: In Excelsis Deo* (NBC television broadcast Dec. 15, 1999) (regarding poverty amongst veterans).

<sup>5</sup> These include: *The West Wing: The West Wing: Inauguration Part I* (NBC television broadcast Feb. 5, 2003) (regarding humanitarian interventions); *The West Wing: Inauguration: Over There*, *supra* note 1 (same); *The West Wing: The California 47th* (NBC television broadcast Feb. 19, 2003) (same); *The West Wing: The West Wing: Red Haven's on Fire* (NBC television broadcast Feb. 26, 2003); *The West Wing: Gaza* (NBC television broadcast May 12, 2004) (regarding U.S. involvement in the Israeli-Palestinian conflict); *The West Wing: Memorial Day* (NBC television broadcast May 19, 2004) (same); *The West Wing: NSF Thurmont* (NBC television broadcast Oct. 20, 2004) (same); *The West Wing: The Birnam Wood* (NBC television broadcast Oct. 27, 2004) (same); *The West Wing: Third-Day Story* (NBC television broadcast Nov. 3, 2004) (same); *The West Wing: The Dover Test* (NBC television broadcast Nov. 24, 2004) (regarding U.S. involvement in the Israeli-Palestinian conflict); *The West Wing: Mr. Frost* (NBC television broadcast Oct. 16, 2005) (same); *The West Wing: Shibboleth* (NBC television broadcast Nov. 22, 2000) (regarding United States-China relations); *The West Wing: Hartsfield's Landing* (NBC television broadcast Feb. 27, 2002) (same); *The West Wing: A Change is Gonna Come* (NBC television broadcast Dec. 1, 2004) (same); *The West Wing: In the Room* (NBC television broadcast Dec. 8, 2004) (regarding United States-China relations); *The West Wing: Impact Winter* (NBC television broadcast Dec. 15, 2004) (same); *The West Wing: Han* (NBC television broadcast Oct. 22, 2003) (regarding United States-North Korea relations); *The West Wing: An Khe* (NBC television broadcast Feb. 18, 2004) (same); *The West Wing: Lord John Marbury* (NBC television broadcast Jan. 5, 2000) (regarding India-Pakistan conflict); *The West Wing: He Shall, from Time to Time* (NBC television broadcast Jan. 12, 2000) (same); *The West Wing: Undecideds* (NBC television broadcast Dec. 4, 2005) (regarding United States involvement in China-Russia relations); *The West Wing: The Wedding* (NBC television broadcast Dec. 11, 2005) (same); *The West Wing: The Cold* (NBC television broadcast Mar. 12, 2006) (same); *The West Wing: Transition* (NBC television broadcast Apr. 23, 2006) (same); *The West Wing: A Proportional Response* (NBC television broadcast Oct. 6, 1999) (regarding United States military response to terrorism by foreign states); *The West Wing: In This White House* (NBC television broadcast Oct. 25, 2000) (regarding availability of affordable pharmaceutical drugs for AIDS victims in Africa); *The West Wing: Lord John Marbury* (NBC television broadcast Jan. 5, 2000) (regarding nuclear and arms proliferation and security); *The West Wing: He Shall, from Time to Time* (NBC television broadcast Jan. 12, 2000) (same); *The West Wing: The Lame Duck Congress* (NBC television broadcast Nov. 8, 2000) (same); *The West Wing: Galileo* (NBC television broadcast Nov. 29, 2000) (same); *The West Wing: The Drop-In* (NBC television broadcast Jan. 24, 2001) (same); *The West Wing: Han* (NBC

contemporary American society. Given *TWW*'s provocative and engaging content, scholars have devoted considerable attention to the various themes, metaphors, and issues explored on the series.<sup>6</sup> Yet, these examinations have not advanced any analysis of *TWW*'s treatment of one of the more important and controversial international legal and political issues of our time—humanitarian intervention. Although there is no universally recognized definition of humanitarian intervention, for the purposes of this Article, I shall frame it as the use of military force by an international organization, outside state, or group of states to halt acts of genocide, crimes against humanity, and other grave violations of human rights norms that take place in other jurisdictional spaces where the local government perpetrates and/or is unable or unwilling to intervene to stop such acts

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television broadcast Oct. 22, 2003) (same); *The West Wing: The Warfare of Genghis Khan* (NBC television broadcast Feb. 11, 2004) (same); *The West Wing: Things Fall Apart* (NBC television broadcast Mar. 30, 2005) (same); *The West Wing: 2162 Votes* (NBC television broadcast Apr. 6, 2005) (same); *The West Wing: Bartlet's Third State of the Union* (NBC television broadcast Feb. 7, 2001) (regarding United States' efforts in halting drug trafficking and narcotics trade in foreign states); *The West Wing: The War at Home* (NBC television broadcast Feb. 14, 2001) (same); *The West Wing: Angel Maintenance* (NBC television broadcast Mar. 26, 2003) (same); *The West Wing: 18<sup>th</sup> and Potomac* (NBC television broadcast May 9, 2001) (regarding United States involvement in the domestic political crisis in Haiti); *The West Wing: Two Cathedrals* (NBC television broadcast May 16, 2001) (same); *The West Wing: Manchester Part I* (NBC television broadcast Oct. 10, 2001) (same); *The West Wing: Manchester Part II* (NBC television broadcast Oct. 17, 2001) (same); *The West Wing: Commencement* (NBC television broadcast May 7, 2003) (regarding terrorism by foreign citizens on United States soil); *The West Wing: Twenty-Five* (NBC television broadcast May 14, 2003) (same); *The West Wing: 7A WF 83429* (NBC television broadcast Sept. 24, 2003) (regarding terrorism by foreign citizens on United States soil); *The West Wing: The Dogs of War* (NBC television broadcast Oct. 1, 2003) (same); *The West Wing: War Crimes* (NBC television broadcast Nov. 7, 2001) (regarding United States' concerns about the jurisdiction of the International Criminal Court and its potential impact on United States military planning and engagements); *The West Wing: The Women of Qumar* (NBC television broadcast Nov. 28, 2001) (regarding relations with allied authoritarian regimes); *The West Wing: Holy Night* (NBC television broadcast Dec. 11, 2002) (same); *The West Wing: The U.S. Poet Laureate* (NBC television broadcast Mar. 27, 2002) (regarding United States policy on the use of landmines); *The West Wing: The Black Vera Wang* (NBC television broadcast May 8, 2002) (regarding assassination of foreign terrorists and 'rogue' leaders); *The West Wing: We Killed Yamamoto* (NBC television broadcast May 15, 2002) (same); *The West Wing: Posse Comitatus* (NBC television broadcast May 22, 2002) (same); *The West Wing: 20 Hours in America* (NBC television broadcast Sept. 25, 2002) (same); *The West Wing: Pilot* (NBC television broadcast Sept. 22, 1999) (regarding United States-Cuba relations); *The West Wing: Ninety Miles Away* (NBC television broadcast Mar. 16, 2005) (regarding United States-Cuba relations).

<sup>6</sup> See, TREVOR PARRY-GILES & SHAWN J. PARRY-GILES, THE PRIME-TIME PRESIDENCY: *THE WEST WING* AND U.S. NATIONALISM (2006); MELISSA CRAWLEY, MR. SORKIN GOES TO WASHINGTON: SHAPING THE PRESIDENT ON TELEVISION'S *THE WEST WING* (2006); R. Lance Holbert et al., *The West Wing as Endorsement of the U.S. Presidency: Expanding the Bounds of Priming in Political Communication*, 53 J. COMM. 427, 440 (2003) [hereinafter *The West Wing as Endorsement*]; THE WEST WING: THE AMERICAN PRESIDENCY AS TELEVISION DRAMA (Peter C. Rollins & John E. O'Connor eds., 2003); Trevor Parry-Giles & Shawn J. Parry-Giles, *The West Wing's Prime-Time Presidency: Mimesis and Catharsis in a Postmodern Romance*, 88 Q. J. SPEECH 209 (2002); Kay Richardson, *The Dark Arts of Good People: How Popular Culture Negotiates "Spin" in NBC's The West Wing*, 10 J. SOCIOLOGICAL 52 (2006); Rachel Gans-Boriskin & Russ Tisinger, *The Bushlet Administration: Terrorism and War on The West Wing*, 28 J. AM. CULTURE 100 (2005); R. L. Holbert, et al., *The West Wing and Depictions of the American Presidency: Expanding the Domains of Framing in Political Communication*, 53 COMM. Q. 505 (2005); J. Elizabeth Clark, *The Bartlet Administration and Contemporary Populism in NBC's The West Wing*, in THE CONTEMPORARY TELEVISION SERIES 224 (Michael Hammond & Lucy Mazdon eds., 2005); Simon Philpott & David Mutimer, *Inscribing the American Body Politic: Martin Sheen and Two American Decades*, 10 GEOPOLITICS 335 (2005); Andrew Davison, *The "Soft" Power of Hollywood Militarism: The Case of The West Wing's Attack on Antalya, Turkey*, 28 NEW POL. SCI. 467 (2006); CONSIDERING AARON SORKIN: ESSAYS ON THE POLITICS, POETICS AND SLEIGHT OF HAND IN THE FILMS AND TELEVISION SERIES (Thomas Fahy ed., 2005).

committed by non-state actors.<sup>7</sup> During the fourth season of *TWW*, the Bartlet Administration is faced with the outbreak of genocide within the fictional African nation of the Republic of Equatorial Kundu (“Kundu”). The genocide is perpetrated by the Kundunese government and its non-state supporters, comprised of individuals from the majority Arkutu population, and the violence is directed against the minority Induye community.<sup>8</sup> After much consideration, the President elects to unilaterally and controversially deploy United States military forces to enter Kundunese territory without authorization from the United Nations (“U.N.”) Security Council under Chapter VII of the Charter of the United Nations (“U.N. Charter”). Following the decision to deploy United States military forces in Kundu, the genocide is (presumably) halted due to the intervention, thus saving many more from brutal violence and death.<sup>9</sup>

As an exhibitor of legal and political norms, knowledge, and information, and given its widespread viewership, *TWW* has, and may continue<sup>10</sup> to maintain, the power to impact and shape viewers’ perceptions of real world political actors, as well as political and legal issues.<sup>11</sup> This article seeks to critically examine the content, metaphors, and meanings transmitted by *TWW*’s episodes on humanitarian intervention, as visual forms of jurisprudential and political texts, and the possible ramifications they may have in shaping public perception as forms of persuasive authority on the legality of unilateral American humanitarian intervention. These episodes are important to examine because first, *TWW* projects a norm that defending human rights and stopping genocide globally is primarily (and perhaps *de facto* exclusively) an American moral and legal obligation. Second, this American “Responsibility to Protect” (“R2P”) is predicated on the basis that other international, state or local civil society actors are generally unable or unwilling to fulfill or share in this obligation. *TWW*’s narrative of humanitarian intervention is also important to examine as it closely models if not reproduces the “Savage-Victim-Savior” (“SVS”) paradigm described and critiqued by Professor Makau Mutua.<sup>12</sup> Mutua

<sup>7</sup> For other definitions of humanitarian intervention, see J. L. Holzgrefe, *The Humanitarian Intervention Debate*, in HUMANITARIAN INTERVENTION: ETHICAL, LEGAL, AND POLITICAL DILEMMAS 18 (J. L. Holzgrefe & Robert O. Keohane eds., 2003) (defining humanitarian intervention as “the threat or use of force across state borders by a state (or group of states) aimed at preventing or ending widespread and grave violations of the fundamental human rights of individuals other than its own citizens, without the permission of the state within whose territory force is applied”); STEPHEN A. GARRETT, DOING GOOD AND DOING WELL: AN EXAMINATION OF HUMANITARIAN INTERVENTION 3 (1999) (stating that humanitarian intervention involves “the interjection of military power—or the threat of such action—by one or more outside states into the affairs of another state that has as its purpose (or at least as one of its principle purposes) the relieving of grave human suffering.”).

<sup>8</sup> The Kundunese Genocide storyline takes place over four episodes during the fourth season: *The West Wing: The West Wing: Inauguration Part I*, *supra* note 5; *The West Wing: Inauguration: Over There*, *supra* note 1; *The West Wing: The California 47th*, *supra* note 5; and *The West Wing: Red Haven’s on Fire*, *supra* note 5.

<sup>9</sup> This is discussed in greater detail below in the final paragraphs of Section III.C.

<sup>10</sup> Its continuing impact may be transmitted through daily syndicated airings and through its availability to consumers through DVD box sets.

<sup>11</sup> For example, one study explored whether *TWW* had an impact on the public’s perceptions of real life political figures. It provided “empirical support that the positive images of the U.S. presidency offered on *The West Wing* result in more positive viewer perceptions of those who hold or have held the office.” *The West Wing as Endorsement*, *supra* note 6, at 440.

<sup>12</sup> Makau Mutua, *Savages, Victims, and Saviors: The Metaphor of Human Rights*, 42 HARV. INT’L L.J. 201 (2001). See also David Kennedy, *Spring Break*, 63 TEX. L. REV. 1377, 1379, 1385–90 (1985).

posits the criticism that the SVS paradigm is rooted at the heart of an essentially “Western” international human rights discourse.<sup>13</sup> In this discourse, Mutua argues that human rights activists and Western states are portrayed (and see themselves) as saviors<sup>14</sup> rescuing victims<sup>15</sup> (usually from the developing world) who are being tormented by savage<sup>16</sup> governments and non-state actors (also from the developing world) that seek to perpetrate the most violent crimes and abuses imaginable.

Generally, the SVS paradigm plays out in *TWW* in the following way: the Bartlet Administration acts as a Western savior, rescuing a victimized African population from a “savage” genocidal African government and the ethnic group which it represents. By focusing on an American obligation to intervene, the Kundunese people remain mere victims; the objects of an American *noblesse oblige*. Such narrative strategies deprive victims of their subjectivity and the power to resist perpetrators of genocide, or *génocidaires*. Thus, *TWW*'s humanitarian intervention storyline disregards, in large part, the role that civil society and local armed resistance can play—and has historically played—in confronting genocide.<sup>17</sup> Also, the Kundunese storyline neglects to consider and portray how the international community and other state actors can play a significant role in preventing or even stopping such humanitarian crises.

In examining *TWW*'s promotion of an exclusive American R2P, this Article shall be divided into three parts. In Part II, I shall examine how television programs, as forms of cultural media, are, or at least can be, a source of legal information from which legal normativity can be disseminated. Based on this premise, I shall briefly discuss the overall normative role that *TWW* constructs regarding the domestic role of the United States government, and how it serves as a basis to construct a vigorous interventionist philosophy as applied to United States foreign policy. Part III is divided into four Sections. In the first Section, I shall broadly canvass the debates surrounding humanitarian intervention in order to contextualize *TWW*'s positive assertion about America's duty to engage in such military actions. I argue that *TWW* pursues a more radical approach to intervention than other concepts of intervention thus far proposed. In the second Section, I demonstrate how *TWW* constructs its vision of a unilateral American humanitarian intervention by employing and mirroring the imagery of the SVS paradigm so heavily criticized by Mutua. In the third Section, I analyze how this unilateral obligation is justified by imagining the international community and other nation-states as unable or unwilling to assist victimized populations. In the fourth Section, I examine

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<sup>13</sup> By “Western” I am largely referring to various democratic, industrialized, and affluent states in North America and Europe, in addition to Australia and New Zealand. Mutua asserts the principal authors of the SVS Paradigm include the U.N., Western states, international non-governmental organizations, and senior Western academics. See Mutua, *supra* note 12, at 202.

<sup>14</sup> See *id.* at 233–42.

<sup>15</sup> See *id.* at 227–42.

<sup>16</sup> See *id.* at 219–27.

<sup>17</sup> See generally; RESISTING THE HOLOCAUST (Ruby Rohrlich ed., 1998); John M. Janzen, *Historical Consciousness and a 'Prise de Conscience' in Genocidal Rwanda*, 13 J. AFR. CULTURAL STUD. 153 (2000); Villia Jefremovas, *Acts of Human Kindness: Tutsi, Hutu and the Genocide*, 23 ISSUE: J. OPINION 28 (1995).

and criticize *TWW*'s unilateral intervention model against the proposals set out in the first section. Lastly, in Part IV, I set out some alternative ideas that *TWW* might have explored in presenting ways to respond to humanitarian crises.

## II. TELEVISION AND LEGAL NORMATIVITY

### A. VISUAL TEXTS

At first blush, it may seem odd to perceive television episodes as visual jurisprudential texts. The creation and dissemination of law are still most often associated with the state and the various branches of government. However, many scholars have argued that the power to create law is not represented merely by the oligopoly of legislators, jurists, or the executive branch of government and its agencies; non-state agents in everyday society also have a share in creating, perpetuating or modifying the law.<sup>18</sup> Much has been written about the production of legal normativity by non-state actors, as well as the non-state norms that often govern our daily conduct, the ubiquity of such norms, and the roles they play in governing behavior in everyday society. These include norms that regulate everyday interactions within workplace environments, family dynamics, commercial transactions, and other zones of human interaction. Legal pluralists study the ways that non-state legal norms emerge, change, and react to one another in social situations.<sup>19</sup> Building from the legal pluralist foundation, Roderick MacDonald and Martha-Marie Kleinhans have further advocated for a “critical” legal pluralism framework that emphasizes the ways in which individual legal subjects control and shape law, rather than serve as mere objects of state and non-state norms. Within this framework, individual “[s]ubjects seek to explore the variety of possible worlds and selves that they can reflect and project. In their relations with other subjects and in their biographies of themselves, subjects evaluate how they want to live in the worlds open to them . . . subjects construct and are constructed by State, society, and community.”<sup>20</sup> Seen through a critical legal pluralist lens, the number of actual and potential producers of legal normativity becomes exponential.<sup>21</sup> Amongst the many generators of non-state legal normativity, television shows and films, as with other creative mediums,<sup>22</sup>

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<sup>18</sup> Daniel Jutras, *The Legal Dimensions of Everyday Life*, 16 CANADIAN J.L. & SOC'Y 45 (2001); Martha-Marie Kleinhans & Roderick A. MacDonald, *What Is a Critical Legal Pluralism*, 12 CANADIAN J.L. & SOC'Y 25 (1997); LEGAL POLYCENTRICITY: CONSEQUENCES OF PLURALISM IN LAW (Hanne Petersen & Henrik Zahle eds., 1995).

<sup>19</sup> Kleinhans & MacDonald, *supra* note 18, at 29.

<sup>20</sup> *Id.* at 42–43.

<sup>21</sup> William P. MacNeil, for instance, identifies cultural productions such as J.K. Rowling's Harry Potter literary series and the television series *Buffy the Vampire Slayer* as embodying “lex populi,” or the people's law. Within each of these popular formats, MacNeil argues that there is an audience that can be reached which extends beyond the confines of the legal academy; as such, law becomes more democratized. See WILLIAM P. MACNEIL, LEX POPULI: THE JURISPRUDENCE OF POPULAR CULTURE 1–2 (2007).

<sup>22</sup> This includes literature and music. See W. Anthony Sheppard, *An Exotic Enemy: Anti-Japanese Musical Propaganda in World War II Hollywood*, 54 J. AM. MUSICOLOGICAL SOC'Y 303 (2001); Yair Auron, *The Forty Days of Musa Dagh: Its Impact on Jewish Youth in Palestine and Europe*, in

can have a profound capacity to educate (or distort),<sup>23</sup> as well as construct or reconstruct norms and insert them into the stream of public consciousness.<sup>24</sup>

Television and film productions that focus on legal and political themes thus have the ability to perform large-scale legal and political indoctrination in that they “train audiences in judgment while examining—and often reinforcing—legal norms, logic and structure.”<sup>25</sup> These norms may consequently impact, to varying degrees, public perceptions and expectations about various political, legal, economic, social, cultural and religious issues.<sup>26</sup> In some cases, this may involve informing a viewer about an issue that they were never exposed to and perhaps leaving a compelling imprint.<sup>27</sup> For others, television and film may help to reshape

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REMEMBRANCE AND DENIAL: THE CASE OF THE ARMENIAN GENOCIDE (Richard G. Hovannisian ed., 1998).

<sup>23</sup> Given their ability to help stimulate learning, many educators use films and television programs as pedagogical tools to speak about a variety of issues. Daniel Lieberfeld, *Teaching about War through Film and Literature*, 40 PS: POL. SCI. & POL. 571 (2007); Staci L. Beavers, *The West Wing as a Pedagogical Tool*, 35 PS: POL. SCI. & POL. 213 (2002).

<sup>24</sup> As Sarat et al. note, “[t]he moving image attunes us to the ‘might-have-beens’ that have shaped our worlds and the ‘might-bes’ against which those worlds can be judged and toward which they might be pointed.” Austin Sarat et al., *On Film and Law: Broadening the Focus*, in LAW ON THE SCREEN 2 (Austin Sarat, et al. eds., 2005). See also Peter Robson, *Law and Film Studies: Autonomy and Theory*, in LAW AND POPULAR CULTURE 24 (Michael D. A. Freeman ed., 2005) (stating that “[r]ather than just providing a reflection of the reality of the life of law, popular culture [including films and television] has a constructive role in the creation of law.”).

<sup>25</sup> Orit Kamir, *Cinematic Judgment and Jurisprudence: A Woman’s Memory, Recovery, and Justice in a Post-Traumatic Society (A Study of Polanski’s Death and the Maiden)*, in LAW ON THE SCREEN, *supra* note 24, at 28. See also George Comstock, *The Impact of American Television on American Institutions*, 28 J. COMM. 12 (1978); CRAWLEY, *supra* note 6, at 18.

<sup>26</sup> See, e.g., Comstock, *supra* note 25; Barbara J. Wilson, et al., *The Impact of Social Issue Television Programming on Attitudes Toward Rape*, 19 HUMAN COMM. RES. 179 (1992); Claudia Springer, *Military Propaganda: Defense Department Films from World War II and Vietnam*, 3 CULTURAL CRITIQUE 151 (1986); Donald L. Diefenbach, *The Portrayal of Mental Illness on Prime-time Television*, 25 J. COMMUNITY PSYCHOL. 289 (1997); Sherryl Browne Graves, *Television and Prejudice Reduction: When Does Television as a Vicarious Experience Make a Difference?*, 55 J. SOC. ISSUES 707 (1999); Douglas M. McLeod & Benjamin H. Detenber, *Framing Effects of Television News Coverage of Social Protest*, 49 J. COMM. 3 (1999); Douglas Kellner, *Presidential Politics: The Movie*, 46 AM. BEHAVIORAL SCIENTIST 467 (2002); Lisa D. Butler, et al., *The Psychological Impact of Viewing the Film “JFK”: Emotions, Beliefs, and Political Behavioral Intentions*, 16 POL. PSYCHOL. 237 (1995); Melissa A. Milkie, *Social Comparisons, Reflected Appraisals, and Mass Media: The Impact of Pervasive Beauty Images on Black and White Girls’ Self-Concepts*, 62 SOC. PSYCHOL. Q. 190 (1999); Brandon S. Centerwall, *Exposure to Television as a Risk Factor for Violence*, 129 AM. J. EPIDEMIOL. 643 (1989); Eugene D. Tate & Larry F. Trach, *The Effects of United States Television Programs Upon Canadian Beliefs about Legal Procedure*, 6 CANADIAN J. COMM. 1 (1980); Michael Pfau, et al., *Influence of Prime-Time Television Programming on Perceptions of the Federal Government*, 4 MASS COMM. & SOC’Y. 437 (2001); Michael Pfau, et al., *Television Viewing and Public Perceptions of Attorneys*, 21 HUMAN COMM. RESEARCH 307 (1995).

<sup>27</sup> Many studies have analyzed the substantive content and the manner in which issues are presented in various films and television programs. See, e.g., Michael Paul Rogin, RONALD REAGAN, THE MOVIE AND OTHER EPISODES IN POLITICAL DEMONOLOGY (1987); TELEVISION IN CONTEMPORARY ASIA (David French & Michael Richards eds., 2000); THE CONTEMPORARY TELEVISION SERIES (Michael Hammond & Lucy Mazdon eds., 2005); Richard Sparks, *Masculinity and Heroism in the Hollywood ‘Blockbuster’: The Culture Industry and Contemporary Images of Crime and Law Enforcement*, 36 BRIT. J. CRIM. 348 (1996); Stefan Machura & Stefan Ulbrich, *Law in Film: Globalizing the Hollywood Courtroom Drama*, 28 J.L. & SOC’Y 117 (2001); Steve Greenfield, *Hero or Villain? Cinematic Lawyers and the Delivery of Justice*, 28 J.L. & SOC’Y 25 (2001); Matthias Kuzina, *The Social Issue Courtroom Drama as an Expression of American Popular Culture*, 28 J.L. & SOC’Y 79 (2001); Steven D. Stark, *Perry Mason Meets Sonny Crockett: The History of Lawyers and the Police as Television Heroes*, 42 U. MIAMI L. REV. 229 (1987); Judith Grant, *Prime Time Crime: Television Portrayals of Law Enforcement*, 15 J. AM. CULTURE 57 (1992); Joan Gershen Marek, *The Practice and Ally McBeal: A New Image for Women Lawyers on Television?*, 22 J. AM. CULTURE 77 (1999); Sean O’Sullivan, *UK Policing and its*

viewers' perspectives on issues upon which they have previously formed an opinion.<sup>28</sup>

Over the past two decades, there has been a steady growth in studies on law and popular culture, and particularly, on the intersection and the impact that one has on the other.<sup>29</sup> Law shapes popular culture just as popular culture can influence the formation or modification of state and non-state legal norms. Many of the common perceptions about law—that is, attitudes, opinions, and ideas about the law held by individuals who are not legal professionals, jurists, legal academics or law students—are acquired through popular mediums.<sup>30</sup> Although accessibility to jurisprudence, statutes, and other forms of state-based legal rulemaking is expanding,<sup>31</sup> individuals still acquire “knowledge” of the law, however imperfect and inaccurate, through dramatizations in popular mediums such as film, television, literature, and now increasingly through the internet.

Many of these mediums often present a variety of imaginary (if not completely distorted) narratives about the ways in which law is practiced by legal professionals, how it is conducted in the courtrooms,<sup>32</sup> and how it is implicated in the context of law enforcement and criminal law. Seldom do we see, at least in the fictional television medium, law as created in the domains of the legislative and/or executive branches of government, in addition to the political processes which produce the various laws, regulations, and policies produced by such state actors. Although *TWW* might more often be characterized as a television program that dramatizes political issues and processes, it is also a series about law, albeit unlike most others. Its principal legal agents are political actors working in the executive branch of government. This branch, in addition to its legislative and judicial counterparts, is a creator of state-based legal norms, via, for instance, the promulgation of publicly-binding administrative regulations and presidential executive orders. More broadly, the decisions and conduct of the executive branch of government carry a host of wide-ranging legal implications and serve as informal precedent for future administrations. Examples of this include decisions to deploy military forces into foreign territories to stop the perpetration of genocide, or even to assassinate a

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*Television Portrayal: 'Law and Order' Ideology or Modernising Agenda?*, 44 HOW. J. CRIM. JUST. 504 (2005); David S. Meyer & David S. Hoynes, *Shannon's Deal: Competing Images of the Legal System on Primetime Television*, 27 J. POP. CULTURE 31 (1994); Jack G. Shaheen, *Hollywood's Muslim Arabs*, 90 THE MUSLIM WORLD 22 (2000); Fiona McNee, *Something's Happened: Fictional Media as a Coping Mechanism*, 20 PROMETHEUS 281 (2002).

<sup>28</sup> As Kamir notes: “a law film may introduce a viewer to jurisprudential issues and value systems while provoking a host of emotive responses and powerful impressions.” Kamir, *supra* note 25, at 31. In other situations, a television program may be credited for having spawned a transformation in emergency medical services. See Paul Bergman, *Emergency! Send a TV Show to Rescue Paramedic Services!*, in LAW AND POPULAR CULTURE, *supra* note 24, at 130.

<sup>29</sup> See generally RICHARD K. SHERWIN, POPULAR CULTURE AND LAW (2006); Lawrence M. Friedman, *Law, Lawyers, and Popular Culture*, 98 YALE L.J. 1579 (1989).

<sup>30</sup> See Friedman, *supra* note 29, at 1579.

<sup>31</sup> See, e.g., The World Legal Information Institute, available at <http://www.worldlii.org> (last visited Sept. 28, 2009), and FindLaw, available at <http://www.findlaw.com> (last visited Sept. 28, 2009). These websites provide ready access to jurisprudence.

<sup>32</sup> One way in which many television shows about law can distort the way that law is practiced is the speed with which cases are litigated. In many television serials, a case is initiated, a trial has begun and concluded within an hour. Thereby viewers are given a rather distorted sense of the speed at which the legal system moves and operates.

foreign government official. State conduct also contributes to the formation and development of customary international law.<sup>33</sup> Thus, unlike other legal television dramas, *TWW* explores the creation and actualization of legal normativity through political processes and the work of its fictionalized political actors.

More importantly, as a non-state producer and projector of law, *TWW*, and its writers in particular, consistently advance a series of normative ideas about how government should conduct itself. In order to better understand and contextualize *TWW*'s illustration of a normative government response to outbreaks of genocide in foreign states and its promotion of an American obligation to intervene in such circumstances, the following section discusses the show's ideal vision of the role of government, particularly the executive branch.

#### B. ENVISIONING AN IDEAL NORMATIVE WORLD

Just as artistic and creative productions have the power to shape ideas and impact attitudes, real world events can also help to inspire and create art that responds to such realities. The presidency of Democrat William Jefferson Clinton (1993-2001) was an era of both tremendous economic growth and domestic political turbulence. Following the 1994 midterm elections, the Republican Party took control of both chambers of Congress and effectively blocked the Clinton Administration's initiatives in various areas. The Clinton Administration was also confronted with numerous international humanitarian crises including the genocide in Rwanda and was heavily criticized for its lukewarm response to expanding the mandate of the U.N. peacekeeping mission in Rwanda and allowing it more personnel and *matériel*.<sup>34</sup> The Clinton years were further scarred by domestic and foreign terrorist attacks on American soil as well as its embassies in Africa. The Clinton-Lewinsky sex scandal, the subsequent investigations of independent prosecutor Kenneth Starr, and the Republican Party-driven House impeachment proceedings aimed at removing President Clinton from power fostered a heightened sense of cynicism about the honesty, integrity, and motivations of political actors and public servants. Notwithstanding its successes, for many Democrats and liberals, the Clinton Administration failed to live up to its full potential and left many with "an unaddressed desire to believe in something politically positive."<sup>35</sup> *TWW* emerged out of this cynical political landscape in the late 1990s. *TWW* sought not only to refashion the image of a Democratic Party presidency shorn of the personal misconduct of President Clinton, but also to reconstruct different responses to particular issues and events, challenging both the choices and decisions of the Clinton Administration and its Republican successor in addressing these matters.

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<sup>33</sup> International customary law is based upon the established practice and belief by states that they are obligated to follow such rules of conduct. ANTONIO CASSESE, INTERNATIONAL LAW 119-21 (2001).

<sup>34</sup> John Stackhouse, *Rwanda Fallout: Denial, Anger*, GLOBE AND MAIL, July 8, 2000, at A1, available at <http://www.commondreams.org/headlines/070800-01.htm> (last visited Oct. 18, 2009).

<sup>35</sup> Patrick Finn, *The West Wing's Textual President: American Constitutional Stability and the New Public Intellectual in the Age of Information*, in Rollins & O'Connor, *supra* note 6, at 123.

The brainchild of Aaron Sorkin, *TWW* was created as a “valentine to public service” where leaders in the White House are depicted neither as “dolts” nor “Machiavellian.”<sup>36</sup> It celebrates the ability of government actors and institutions to act as “instruments of good” in service of the nation and the world as peacekeepers and enforcers of the rule of law.<sup>37</sup> Through the trials and tribulations of the Bartlet Administration, *TWW* merges political and legal fantasy or mythology with real world issues and contexts, lending a certain verisimilitude to its portrayal. By tracking real world events through slightly altered facts, it portrays ways in which United States government actors could act in particular circumstances, in contrast to the way their real world counterparts have acted or are likely to act concerning specific events. In so doing, it places these fictional characters in situations that track nonfictional circumstances, thus blending fact and fiction. Sorkin’s conduits in this enterprise are the ennobled characters of the Bartlet Administration, particularly the President and his senior staff. These characters include: Leo McGarry, the Chief of Staff, Toby Ziegler, the Communications Director, Joshua Lyman, the Deputy Chief of Staff, Sam Seaborn, the Deputy Communications Director, and Claudia Jean (C.J.) Cregg, the Press Secretary.<sup>38</sup> Emblematic of Sorkin’s idealization of public service, *TWW*’s White House staffers, in contrast to their real world counterparts,<sup>39</sup> are portrayed as largely selfless actors who generally steer away from competitive intra-office politics and turf wars;<sup>40</sup> they are single-mindedly committed to serving their President and his progressive agenda, even in the face of dire opposition from a Republican-dominated Congress that seeks to block their every initiative.

*TWW*’s sense of idealism is demonstrably tinted by a particular political ideology and reflects a partisan agenda that extols, among other things, the virtues of stricter gun control legislation, a solvent and well-maintained

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<sup>36</sup> *Newshour with Jim Lehrer* (PBS television broadcast Oct. 19, 2000), available at [http://www.pbs.org/newshour/media/west\\_wing/sorkin.html](http://www.pbs.org/newshour/media/west_wing/sorkin.html). Sorkin posits:

“Our leaders, government people are portrayed either as dolts or as Machiavellian somehow. The characters in this show are neither. They are flawed, to be sure, because you need characters in drama to have flaws. But they, all of them, have set aside probably more lucrative lives for public service. They are dedicated not just to this President, but to doing good, rather than doing well. The show is kind of a valentine to public service. It celebrates our institutions. It celebrates education often. These characters are very well educated, and while sometimes playfully snobby about it, there is, in all of them, a love of learning and appreciation of education.”

<sup>37</sup> *Id.*

<sup>38</sup> C.J. later becomes Jed’s Chief of Staff in the sixth season after Leo is forced to resign from the position because he experiences a massive heart attack. *The West Wing: Third-Day Story*, *supra* note 5.

<sup>39</sup> See Pamela Ezell, *The Sincere Sorkin White House, or, the Importance of Seeming Earnest*, in Rollins and O’Connor, *supra* note 6, at 167.

<sup>40</sup> Most of the intra-office rivalry that does occur takes place during the last three seasons of the series, following Sorkin’s departure from the show as the main writer. For instance, during the fifth season, Josh’s portfolio is scaled back due to his serious errors and miscalculations, and consequently some of his duties get transferred to Angela Blake, one of Leo’s chief assistants when he was Secretary of Labor under a previous administration. Josh demonstrates a certain degree of resentment towards her given that she has assumed some of his previous duties. *The West Wing: Separation of Powers* (NBC television broadcast Nov. 12, 2003). During the sixth season, Leo experiences a heart attack and the senior staff is left somewhat rudderless as the President’s attention is diverted to Leo’s bedside. Amidst the chaos, Josh and Toby begin to collide over strategy on how to approach certain matters. This conflict however dissipates once Toby reveals to Josh that he was eager to have Josh appointed interim Chief of Staff, information which Josh receives positively. Immediately afterwards, he compliments Toby on a proposed initiative regarding another matter. In all circumstances, the tensions ultimately become resolved. *The West Wing: Third-Day Story*, *supra* note 5.

social security program, an efficient and publicly-funded health care system, significantly improved public education, and increased access to affordable higher education. In *TWW*'s world view, the vision of a Franklin Roosevelt-style New Deal "big government" is not an embarrassing relic of a bygone era that Democrats should run away from for fear of ridicule and attack by Republicans, but an important vision of government that needs revitalization and embracing. In the first season episode, "He Shall, From Time to Time. . .," the White House staff is in the midst of finalizing the President's speech for his first State of the Union address. The draft of the speech includes the phrase "the era of big government is over." The speech is tested on preview audiences who respond favorably to the line. In the few days leading to the address, Toby Ziegler finds himself increasingly uncomfortable with exalting the underlying sentiment behind the message, namely that government may be a necessary evil, but "the less of it the better." During his conversation with Jed and Josh Lyman, Toby advocates the following:

Toby: "The era of big government is over."  
 Jed: You wanna cut the line?  
 Toby: I wanna change the sentiment. We're running away from ourselves. I know we can score points that way. I was a principle architect of that campaign strategy right along with you Josh. But we're here. Tomorrow night, we do an immense thing. We have to say what we feel. That government, no matter what its failures in the past, and in times to come for that matter, government can be a place where people come together, and where no gets left behind. No one gets left behind. An instrument of good. I have no trouble understanding why the line tested well Josh. But I don't think that means we should say it. I think that means we should change it.  
 Jed: I think so too. What do you think Josh?  
 Josh: I make it a point never to disagree with Toby when he's right Mr. President.  
 Jed: Then you and Sam get your people together and get to work.<sup>41</sup>

This passage highlights two fundamental streams of thought that flow throughout *TWW*'s entire seven-year narrative and helps develop a notion of an American R2P. First, the passage emphasizes the internal struggle that progressive Democrats must overcome, and the sacrifices they must endure, to express their true liberal beliefs in a non-conducive political atmosphere that not only shuns the possibility of government acting as a positive agent of change, but also fails to recognize liberal values as patriotic American values.<sup>42</sup> They are faced with two choices: 1)

<sup>41</sup> *The West Wing: He Shall From Time to Time...*(NBC television broadcast Jan. 12, 2000).

<sup>42</sup> Spencer Downing, *Handling the Truth: Sorkin's Liberal Vision*, in Fahy, *supra* note 5, at 143 (stating that: "[Sorkin] wants the American public to remember that their ideals are based on fundamentally liberal values."). In 1996, President Clinton announced that "the era of big government was over" in a radio address and in his state of the union speech. *The Era of Big Government is Over*, C.N.N. 27 January 1996, available at, [http://www.cnn.com/US/9601/budget/01-27/clinton\\_radio/](http://www.cnn.com/US/9601/budget/01-27/clinton_radio/) (last visited Oct.

aggressively pursue “liberal” policy positions that may make them subject to traditional conservative attacks about Democrats being weak on national security or soft on crime, thus costing them popularity or prospective elections,<sup>43</sup> or 2) take enfeebled positions which accomplish little in the hopes of not angering anyone.<sup>44</sup> *TWW* advocates for a robust and vigorous pursuit of liberal and progressive ideals, including, as the Kundunese genocide storyline will demonstrate, the enforcement of human rights norms at home and abroad. As *TWW*’s narratives make clear over the course of seven seasons, almost every time that the Bartlet Administration pursues a bold but potentially unpopular course of action, it is rewarded with success and public support that recognizes its brave and principled stand.<sup>45</sup> Consequently, *TWW* consistently projects the idea that it is not only desirable for a progressive Democratic administration to come out of its liberal closet, espouse its true beliefs, and implement a progressive agenda, but that in doing so, the result will be a positive and tangible outcome.

*TWW*’s second fundamental theme that has particular relevance for the cultivation of an American R2P is the notion that the United States government, particularly the executive branch, can be “an instrument of good.” Furthermore, if populated with a dedicated and intelligent White House staff governed by a progressive political ideology, it can effect more monumental change on a daily basis than most other institutions could ever hope to accomplish.<sup>46</sup> Thus, *TWW*’s message is that a White House staff’s potential to act as agents for positive change should not be curtailed by reducing the size of the government, but rather enlarged so that its beneficence can touch as many people as possible. *TWW* goes even further, advocating that it is not enough that government should act as an instrument of affirmative change—it should do so with a fierce urgency and

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17 2009). Seen through Toby’s perspective, the statement could be interpreted as a rebuke or criticism of President Clinton “selling out” the liberal ideals of the Roosevelt New Deal era.

<sup>43</sup> In the episode entitled *Gone Quiet*, Sam and Toby debate with Bruno Gianelli, Jed’s reelection campaign’s director, over the issue of attack ads paid for by “soft money” which would effectively circumvent the spirit of campaign finance laws. One of the central policy positions of the Bartlet administration is aggressive campaign finance reform. When Sam asks Bruno why he insists on running his “stupid” leaflets paid for by soft money contributions, Bruno angrily asserts:

‘Cause I am tired of working for candidates who make me think I should be embarrassed to believe what I believe, Sam! I’m tired of getting them elected! You all need some therapy. Because someone came along and said, “liberal” means being soft on crime, soft on drugs, soft on Communism, soft on defense, and we’re going to tax you back to the Stone Age because people shouldn’t have to go to work if they don’t want to! And instead of saying, “Well, excuse me, you right-wing, reactionary, xenophobic, homophobic, anti-education, anti-choice, pro-gun, ‘Leave it to Beaver’s trip back to the fifties,” we cowered in the corner, and said “Please don’t hurt me.” No more.

*The West Wing: Gone Quiet* (NBC television broadcast Nov. 14, 2001).

<sup>44</sup> See, e.g., *The West Wing: Let Bartlet Be Bartlet* (NBC television broadcast Apr. 26, 2000). In this episode, Leo confronts Jed about the latter’s unwillingness to pursue controversial policy initiatives for fear that there will be significant political reprisals that may cost them reelection two years later.

<sup>45</sup> At the conclusion of the second season, Bartlet reveals to the public that he has multiple sclerosis, which he never disclosed during the presidential campaign, even to Leo. Despite calls for him to forego running for a second term in office, he decides at the last minute to reveal that he will run for reelection, notwithstanding the significant challenge he would face in overcoming public distrust for his failure to previously disclose his medical condition. *The West Wing: Two Cathedrals*, *supra* note 5. During the fourth season, Jed defeats his Republican opponent, having overcome the public anger over his failure to disclose his illness. *The West Wing: Election Night* (NBC television broadcast Nov. 6, 2002).

<sup>46</sup> *The West Wing: 365 Days* (NBC television broadcast Jan. 19, 2005).

obligation, given the many problems that afflict the country.<sup>47</sup> In effect, *TWW* advocates for a White House administration headed by an elected savior-in-chief that can rescue the American people with his or her progressive policies and willingness to act.

Part of *TWW*'s methodology to win over the hearts and minds of the viewing audience with respect to the merits of a big government is by portraying the characters of the Bartlet Administration as being imbued with integrity, intelligence, and dedication. Furthermore, they are depicted as people who have taken it upon themselves to make the United States and the world a better place. Within *TWW*'s framework, it is not enough to just be a member of the Democratic Party or pay lip-service to the party's platform and ideals; one has to be passionate, dedicated, highly educated, intelligent, and very much driven by a type of messianic zeal aimed toward the cause of national amelioration based on liberal values. In contrast to other Democrats that are featured in the show, the President and all of the members of the senior staff are highly accomplished and educated individuals who have foregone higher salaries in the private sector to dedicate themselves to public service. *TWW* not only projects the image of a government acting as an instrument of good, but also the vision of a more ideal presidential figure to lead this effort. In its construction of a benevolent savior-in-chief, the President is presented as a debonair, witty, multi-tracked thinker, a Nobel prize-winning economist, and an experienced politician and leader who served three terms in the United States House of Representatives and two terms as Governor of New Hampshire. He is also a devout Roman Catholic, knowledgeable of the scriptures from cover to cover and thus able to withstand attacks and challenge the dogmatic beliefs of the religious right.<sup>48</sup> Although compassionate, he is also designed in such a way as to challenge the myth of the inherently "weak on national security" Democratic president. *TWW*'s prime-time President is willing to get physical and sometimes exhibit extremely hawkish characteristics in defense of America's national security.<sup>49</sup> He is willing to stand up and challenge opponents, both

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<sup>47</sup> In *Two Cathedrals*, Jed contemplates not running for a second term in office after he publicly reveals that he had multiple sclerosis and failed to disclose it when running for his first term as president. However, Jed considers all the objective reasons why he should stay and run for a second term (through an imaginary conversation with his former secretary who just passed away): that a child born in America at that time had a one in five chance of being born into poverty; that forty-four million Americans did not have health insurance; that the single cause of death for African-American men under the age of thirty-five was homicide; that three million Americans were incarcerated; that five million Americans were drug addicts; that three and half million kids went to schools that were literally falling apart; that America needed 127 billion dollars in school construction and it needed it immediately. *The West Wing: Two Cathedrals*, *supra* note 5. After realizing the ramifications if he were not to run again, he makes the unilateral decision to run for a second term. *The West Wing: Manchester Part I* (NBC television broadcast Oct. 10, 2001).

<sup>48</sup> See, e.g., *The West Wing: The Midterms* (NBC television broadcast Oct. 18, 2000).

<sup>49</sup> In the first season, the Syrian government shoots down a plane carrying U.S. military personnel, one of whom includes Jed's personal physician who recently became a father. Upon hearing the news, Jed tells Leo: "I am not frightened. I'm going to blow them off the face of the Earth with the fury of God's own thunder. Get the commanders." *The West Wing: Post Hoc, Ergo Propter Hoc* (NBC television broadcast Sept. 29, 1999). Notwithstanding his resolve to exact justice, however, in the following episode, *A Proportional Response*, Jed is displeased with the response scenario that is presented to him by his Joint Chiefs of Staff. In his view, the response scenario, although proportional, does not appear to provide sufficient deterrence or retribution to prevent the killing of Americans. Instead, he advocates for

Democrat and Republican, in a manner that would be rather unrealistic and unlikely in modern day politics, but nevertheless generates a degree of respect from the viewers for his honesty in having done so. This seemingly unscripted nature makes the President more honorable and trustworthy because he speaks his mind, and when he does not, the viewers are privy to the reasons why that is the case. Viewers can sympathize with his plight and are able to journey with him as he inches his way to the point where he can speak about or do what he knows to be right. By contrast, Republicans, who seek to weaken the Bartlet Administration attempt to minimize the role of the federal government and the notion of big government, and are presented as unintelligent,<sup>50</sup> intelligent but aggressive and dangerous,<sup>51</sup> or intelligent but power-hungry.<sup>52</sup>

The audience's receptivity to the idea of government engaging in a variety of progressive initiatives featured on *TWW* may be heightened by

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a disproportional response. He proclaims: "Let the word ring forth from this time and this place gentlemen; you kill an American, any American, we don't come back with a proportional response, we come back (slams his palm on the table) with total disaster." Jed is then asked (somewhat sarcastically) by one of the Joint Chiefs if he is suggesting that the United States carpet bomb Damascus, the Syrian capital. Jed replies: "I am suggesting General, that you and Admiral Fitzwallace (the Chairman of the Joint Chiefs) and Secretary (of Defense) Hutchison and the rest of the national security team take the next sixty minutes and put together an American response scenario that doesn't make me think we're just docking somebody's damn allowance!" Ultimately, it is Admiral Fitzwallace who talks Jed down and persuades the "liberal" President that pursuing a more proportionate response to Syria's conduct is in America's best interests and that a disproportionate response would be perceived by its allies as a staggering overreaction. *The West Wing: A Proportional Response*, *supra* note 5.

<sup>50</sup> In Jed's re-election campaign, he must campaign against the fictional Governor of Florida, Rob Ritchie. Ritchie is constructed as a simple-minded politician, who, it would appear was meant to resemble then-President George W. Bush. Tad Friend, *Snookered by Bush*, *THE NEW YORKER*, Mar. 4, 2002, available at [http://www.newyorker.com/archive/2002/03/04/020304ta\\_talk\\_friend](http://www.newyorker.com/archive/2002/03/04/020304ta_talk_friend) (last visited Oct. 17, 2009). In one scene Jed describes Ritchie as having a "22 caliber mind in .357 Magnum world," suggesting that Ritchie (and by extension President Bush) is not up for the challenges of a complex and nuanced world and all the difficulties that face a president in confronting them. *The West Wing: The U.S. Poet Laureate*, *supra* note 5. The chasm between Jed's intellect and that of Ritchie is fully displayed in their televised presidential debate. See *The West Wing: Game On* (NBC television broadcast Oct. 30, 2002).

<sup>51</sup> These characteristics are most exhibited by the character Glenn Allen Walken who appears during the season finale of season four and in various episodes of season five. Walken is the Speaker of the United States House of Representatives and is called into the White House to relieve Jed as President under the Twenty-Fifth Amendment. This situation occurs when Jed's youngest daughter Zoey is kidnapped by foreign terrorists and is unable to properly execute his duties due to his extreme anxiety under the circumstances. As a result of a vacancy in the Office of the Vice-President at the time of this crisis in the show, Walken, as Speaker of the House assumes the duties of President. Walken demonstrates a rather aggressive approach to combating the terrorists in question and threatens to bomb the terrorists' home country (the fictional state of Qumar) in retaliation for the kidnapping, even though this may endanger Zoey's life and relations with Qumar, an allied state. See *The West Wing: Commencement*, *supra* note 5; *The West Wing: Twenty-Five*, *supra* note 5; *The West Wing: 7A WF 83429*, *supra* note 5; *The West Wing: The Dogs of War*, *supra* note 5.

<sup>52</sup> During season 5, the character of Jeff Haffley ascends to the position of Speaker of the House and openly challenges the White House through a Republican majority in the House of Representatives. For instance, Haffley manages to block the White House's attempts to fill the vacancy in the Office of the Vice-President with a strong politician who could prove to be a formidable Presidential candidate for the Democratic Party when Jed's term is up. Instead, Haffley suggests a series of names of seemingly unviable Presidential candidates within the Democratic Party he would be willing to support in the House. See *The West Wing: Jefferson Lives* (NBC television broadcast Oct. 8, 2003). In subsequent season five episodes, Haffley challenges the White House in negotiations over the federal budget, resulting in a stalemate and leading to the shutdown of the United States government. Amidst the back and forth of negotiations on the budget, Haffley and fellow Republicans gloat about Haffley's selection for the cover of Time Magazine which dubs him the "New Boss" in Washington D.C. See *The West Wing: Separation of Powers* (NBC television broadcast, Nov. 12, 2003); and *The West Wing: Shutdown* (NBC television broadcast, Nov. 19, 2003).

the positive associations that the viewers may have about a particular policy, such as unilateral humanitarian intervention, because of the Bartlet Administration's approach and dedication to achieving the goals and benefits of said policy. It is not my argument that any positions for or against an actual unilateral American military intervention, for instance in an Africa-based genocide, would be overtly driven by a viewing of *TWW*'s Kundunese genocide storyline (discussed further below), or that a proponent for such an intervention would openly cite to these *TWW* episodes as some kind of persuasive non-state cultural jurisprudence. However, in the event that an actual military intervention were to be deployed in the scenario suggested above, I argue that *TWW* lays down a popular normative foundation to gain public support for such an endeavor, for it feeds into the notion of a noble America rescuing "victims" from "savages." The objective is patent: to save lives and not to occupy foreign lands or exploit a conquered territory's natural resources. It is ennobled warfare in its most altruistic form, shorn of the questionable motives of imperial actors in the past.<sup>53</sup>

Before discussing *TWW*'s Kundunese genocide storyline, the next section will set out some of the current thinking involved in responding to outbreaks of genocide, crimes against humanity, and other humanitarian crises, in order to help situate *TWW*'s position of unilateral intervention within this larger debate. Then I shall examine *TWW*'s exposition of a unilateral United States military intervention in light of these debates.

### III. SAVING AFRICANS FROM THEMSELVES: THE KUNDUNESE GENOCIDE

#### A. CONTEXTUALIZING HUMANITARIAN INTERVENTION

*TWW*'s cultivation of a unilateral American legal and ethical R2P fits within a larger confluence of debates surrounding the use of force to halt atrocities taking place in parts of the globe. Humanitarian military interventions implicate the potential infringement of two fundamental international norms. First, the *U.N. Charter* forbids any member state from using force against the territorial integrity or political independence of any other state.<sup>54</sup> However, force may be permitted where a state or collection of states act in "individual or collective self-defense if an armed attack occurs against a Member of the United Nations"<sup>55</sup> or where the U.N. Security Council authorizes military action to "maintain or restore international peace and security."<sup>56</sup> Second, humanitarian intervention also impinges upon state sovereignty, which is at the heart of the international legal system and reflected in the *U.N. Charter*. Article 2(1) of the *U.N. Charter* explicitly provides that "[t]he Organization is based on the

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<sup>53</sup> ANTONY ANGHIE, *IMPERIALISM, SOVEREIGNTY AND THE MAKING OF INTERNATIONAL LAW* (2007).

<sup>54</sup> U.N. Charter, art. 2, para. 4.

<sup>55</sup> *Id.* at art. 51.

<sup>56</sup> *Id.* at art. 42.

principle of the sovereign equality of all its Members.”<sup>57</sup> An intervention that involves the use of force encroaches upon the sovereignty of an individual state. Yet, there are limits to sovereignty and what a government may do in its own territory, particularly when it involves massive deprivations of human rights—especially the right to life—perpetrated during genocide.

There are strong historical and law enforcement reasons for advancing the concept of humanitarian intervention—including a strong moral imperative to assist people targeted for extermination. During the Second World War, the world witnessed the attempted extermination of the European Jewish population and other targeted groups. Following the war, and shocked by the depravity and scale of the German efforts to implement its “Final Solution” to exterminate whole groups of people, the newly-created U.N. took the initiative to formally criminalize genocide. The Convention on the Prevention and Punishment of the Crime of Genocide (“Genocide Convention”) specifically outlaws acts which, if committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, would constitute genocide.<sup>58</sup> The Genocide Convention requires that all contracting state parties shall undertake to prevent and to punish acts of genocide perpetrated by state rulers, public officials or non-state private actors.<sup>59</sup> Although efforts have been made to prosecute individuals for genocide and other serious crimes, as evidenced in trials before the U.N.’s International Criminal Tribunals for the former Yugoslavia and Rwanda, efforts to carry out a legal obligation to prevent genocide, and by implication a duty to stop one in progress, have been more problematic.<sup>60</sup> Indeed, notwithstanding the lofty aspirations and the deterrent factor that the framers of the Genocide Convention hoped to create to prevent future outbreaks of genocide, the past five decades have evidenced the failure of these goals, as illustrated by the brutalities in Darfur in recent years, the ethnic cleansing of Muslims in Bosnia in the early 1990s, and the genocide of hundreds of thousands of Tutsis in Rwanda in 1994. As scholars have observed, there has been reluctance on the part of the international community to use the “G-word” for fear that recognizing genocide would trigger obligations to intervene militarily.<sup>61</sup>

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<sup>57</sup> *Id.* at art. 2, para. 1.

<sup>58</sup> United Nations Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, 78 U.N.T.S. 277 [hereinafter Genocide Convention]. These acts are: (1) killing members of the group, (2) causing serious bodily or mental harm to members of the group, (3) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part, (4) imposing measures intended to prevent births within the group, and (5) forcibly transferring children of the group to another group.

<sup>59</sup> *Id.*

<sup>60</sup> See William Schabas, *The Genocide Convention at Fifty*, SPECIAL REPORT FOR THE UNITED STATES INSTITUTE OF PEACE (U.S. Inst. Of Peace, Washington, D.C.) (Jan. 7, 1999), at 6, available at <http://www.usip.org/pubs/specialreports/sr990107.pdf>. See also David Luban, *Calling Genocide by Its Rightful Name: Lemkin’s Word, Darfur, and the UN Report*, 7 CHICAGO J. INT’L L. 1 (2006). On the duty to prosecute, see generally, Michael P. Scharf, *The Letter of the Law: The Scope of the International Legal Obligation to Prosecute Human Rights Crimes*, 59 LAW & CONTEMP. PROBS. 41 (1996).

<sup>61</sup> See, e.g., Schabas, *supra* note 60, at 6.

Sensitive to the continued outbreak of such mass killings, then U.N. Secretary-General, Kofi Annan, in the late 1990s called attention to the international community's failure to address the outbreaks of such mass killings in a more effective and comprehensive manner.<sup>62</sup> In response to this concern, the Canadian government established the International Commission on Intervention and State Sovereignty ("ICISS"), which issued its 2001 *Responsibility to Protect* report. The ICISS asserts that "sovereign states have a responsibility to protect their own citizens from avoidable catastrophe—from mass murder and rape, from starvation—but that when they are unwilling or unable to do so, that responsibility must be borne by the broader community of states."<sup>63</sup> The report further stipulates that military intervention is to be deployed as a last resort where there is a large scale loss of life or ethnic cleansing due to state conduct or the state's inability to stop such killing. The ICISS establishes a series of precautionary considerations that are to be satisfied prior to the launching of any such interventions. A military intervention must be: (1) based upon the right intentions, (2) used as a last resort, (3) proportional to the military intervention necessary, and (4) based upon a reasonable chance of success.<sup>64</sup> The ICISS stresses that "[r]ight intention is better assured with multilateral operations, clearly supported by regional opinion and the victims concerned."<sup>65</sup> The *Responsibility to Protect* also calls for the Security Council to authorize such actions under Chapter VII.<sup>66</sup> However, the report does not preclude actions by individual states should the Security Council fail to take action.<sup>67</sup> The U.N. later endorsed the "Responsibility to Protect" doctrine and the responsibility of the international community to intervene when human security is threatened.<sup>68</sup> Although the "Responsibility to Protect" doctrine contemplates independent military intervention in the event that the international community fails to respond, it expects that such necessities will be rare. However, under the terms of the U.N. Charter, such unilateral interventions, absent Security Council authorization would be considered unlawful.<sup>69</sup> While for many the concept of humanitarian interventions may pose a significant challenge to state

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<sup>62</sup> *The Responsibility to Protect*, REPORT OF THE INTERNATIONAL COMMISSION ON INTERVENTION AND STATE SOVEREIGNTY (Int'l Dev. Research Cent., Ottawa, ON), Dec. 2001, at VII, available at <http://www.iciss.ca/pdf/Commission-Report.pdf> (last visited Jan. 23, 2009), questioning "if humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica—to gross and systematic violations of human rights that affect every precept of our common humanity?"

<sup>63</sup> *Id.* at VIII.

<sup>64</sup> *Id.* at XII.

<sup>65</sup> *Id.*

<sup>66</sup> Under the framework of the U.N. Charter, states are not permitted to commit aggressive actions or harmful actions against others states, except in individual or collective self-defense under article 51 of the Charter. However, under Chapter VII of the U.N. Charter, the U.N. Security Council, may authorize a series of actions including military action in order to restore and maintain international peace and security. U.N. Charter, *supra* note 54.

<sup>67</sup> *The Responsibility to Protect*, *supra* note 62, at XII–XIII.

<sup>68</sup> U.N. High-Level Panel on Threats, Challenges & Change, *A More Secure World: Our Shared Responsibility*, U.N. Doc. A/59/565 (Dec. 2, 2004) [hereinafter *A More Secure World*]; The Secretary-General, *Report of the Secretary-General, In Larger Freedom: Towards Development, Security and Human Rights for All*, U.N. Doc. A/59/2005, (Mar. 21, 2005); 2005 World Summit Outcome, G.A. Res. 60/1, P139, U.N. Doc. A/RES/60/1 (Oct. 24, 2005); S.C. Res. 1674, U.N. Doc. S/RES/1674 (Apr. 28, 2006).

<sup>69</sup> U.N. Charter, *supra* note 54, art. 2, para. 4.

sovereignty, some would argue that the doctrine in *Responsibility to Protect* might be recognized as an “emerging norm . . . [of] a collective responsibility to protect.”<sup>70</sup>

The endorsement of a military intervention absent explicit U.N. Security Council authorization has nevertheless been advocated more recently in the context of the humanitarian crises in Darfur.<sup>71</sup> The mounting death count in the region caused by murderous assaults by Arab Janjaweed militias with the support of the Sudanese government against the African population of the Darfur region has been the subject of international attention, both institutionally and in the media. For various reasons, there has been reluctance in the U.N. to intervene. Part of this reluctance is political in nature, given China’s and Russia’s respective oil and commercial interests in Sudan.<sup>72</sup> As both states are permanent members of the Security Council and hold veto power concerning authorization of military action, it is unlikely that any Security Council action will be forthcoming with respect to Sudan. Furthermore, the U.N. International Commission of Inquiry on Darfur, chaired by Antonio Cassese, has determined that the killings in Darfur do not constitute genocide and thus do not trigger a legal obligation to prevent or intervene.<sup>73</sup> In contrast to these efforts, in a concurrent resolution of the United States House of Representatives and Senate, Congress urged “the [Bush Administration] to seriously consider multilateral or even *unilateral intervention* to prevent genocide should the U.N. Security Council fail to act” (emphasis added).<sup>74</sup>

Scholars who promote the merits of unilateral intervention stress the ineffectiveness of the non-interventionist paradigm in international law when weighed against human rights imperatives. Samuel Vincent Jones argues that:

. . . the demands of practical rationality and jurisprudential reasoning dictate that inherent in the duty to ensure protection of human rights is the right to weigh the consequences of adherence to the strict text of the nonintervention regime against those that would ensue from a broader interpretation. This especially applies when a literalist approach induces or allows massive human rights atrocities.<sup>75</sup>

Jones defines unilateral humanitarian intervention as “a military intervention undertaken by a state, group of states, or international organization, without target-state invitation or United Nations authorization, to facilitate the restoration of human rights in another state.”<sup>76</sup> Furthermore, he posits that in order to justify such intervention, the following criteria must be satisfied: (1) there is a supreme or ultra-compelling humanitarian emergency; (2) the use of force is used as a last resort; (3) the use of force complies with the norms of proportionality

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<sup>70</sup> *A More Secure World*, *supra* note 68, at 35.

<sup>71</sup> See Samuel Vincent Jones, *Darfur, the Authority of Law, and Unilateral Humanitarian Intervention*, 39 U. TOL. L. REV. 97 (2007).

<sup>72</sup> *Id.* at 101–02.

<sup>73</sup> *Id.* at 102.

<sup>74</sup> H.R. Con. Res. 467, 108th Cong. (2004).

<sup>75</sup> Jones, *supra* note 71, at 112.

<sup>76</sup> *Id.* at 99, n. 18.

under international humanitarian law; and (4) there is a high probability that the intervention will result in a positive outcome.<sup>77</sup> These criteria are of course similar to those advocated by the ICISS in connection with Security Council-authorized interventions. However, because unilateral humanitarian intervention involves action that is not authorized by the Security Council, Jones suggests that there are further criteria that need to be satisfied in order to justify unilateral intervention. He posits that unilateral humanitarian interventions “should be limited to circumstances in which the [Security Council] is paralyzed by veto or anticipated veto and a majority of General Assembly members, after having considered the aforementioned criteria, agree, via resolution, that unilateral humanitarian intervention is warranted.”<sup>78</sup>

Once having obtained a recommendation that unilateral humanitarian intervention is appropriate, Jones postulates that a series of other subsequent conditions should be considered before engaging in an intervention. Namely, that the intent of the intervening state must be to intervene for as short a time as possible and to disengage as soon as possible.<sup>79</sup> Procedurally, Jones offers that the potential intervening state must approach the Security Council and inform it of its intention to intervene and, if the Council fails to act itself, then this state may intervene.<sup>80</sup> Furthermore, the intervening state must then give the violating state an ultimatum to stop committing the human rights violations in question prior to any acts of intervention.<sup>81</sup> In addition, given the weighty implications entailed by unilateral humanitarian intervention, Jones argues that the intervening state should not use force to alter the territorial integrity of the state being impacted.<sup>82</sup> In order to objectively determine that massive atrocities are being committed against the citizens of a state by their own government, a U.N. Commission of Inquiry should be formed to make such findings, which would be used to bolster the potential intervention.<sup>83</sup> Jones advocates that before a unilateral intervention is launched, the intervening state should receive the endorsement or approval of two Security Council members.<sup>84</sup> Also, the intervening state should enact legislation or publish a policy endorsing unilateral intervention.<sup>85</sup> Lastly, criminal charges against the targeted government should be referred to the International Criminal Court.<sup>86</sup>

Noticeably, while Jones endorses “unilateral” humanitarian intervention, in many ways the requirements for such conduct suggest a fair degree of involvement by the international community by way of a Commission of Inquiry, a General Assembly voting requirement (which in itself is an endorsement requirement), and/or endorsement by member-

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<sup>77</sup> *Id.* at 114.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.* at 115.

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> *Id.* at 116.

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

states of the Security Council prior to the actual intervention. The term “unilateral” usually suggests a situation where a state individually pursues an approach or action absent significant involvement by other states. Instead, Jones appears to be advocating a quasi-unilateral approach or even an alternative international or multilateral approach that essentially minimizes the role of the Security Council and increases the importance of the General Assembly. Enforcement of the global collective will that the General Assembly represents becomes the responsibility of the intervening state.

Critical of such proposed humanitarian interventions, whether multilateral or unilateral, a modest body of literature extols the merits of local resistance as an important bulwark against genocide. This body of literature criticizes the undue emphasis on and expectation that foreign rescuers should or will be the most effective force against genocide and similar atrocities.<sup>87</sup> In part, this argument stresses that resistance by members of civil society can be more effective in countering the malevolence of *génocidaires* than international intervention, which often intervenes in a tardy fashion.<sup>88</sup> Furthermore, as Orford and Mégret have posited, advocates of international intervention have failed to recognize the agency of individuals in countries where intervention may be sought. Orford asserts: “[t]here is no sense in which these peoples are understood to be themselves actively working to shape their communities and their world, except to the extent of seeking the protection of the international community.”<sup>89</sup> History has indeed demonstrated that there have been a whole host of instances where individuals or groups have been highly instrumental in saving themselves by resisting efforts to destroy their identified group, during (but not limited to) the Holocaust and the Rwandan genocide.<sup>90</sup>

Orford has also noted that the expectation that the international community will intervene to protect human rights may also threaten the concept of human rights itself, if such expectation is relied upon.<sup>91</sup> For instance, during the Rwandan genocide, hundreds of Tutsis who were hiding in the Bisesero Hills came out of hiding upon seeing the approach of French peacekeepers.<sup>92</sup> Unfortunately, the peacekeepers were not sufficiently equipped with enough trucks to transport the Tutsis and left them behind and in the open to acquire sufficient transportation.<sup>93</sup> Upon returning, the peacekeepers found that the Tutsis they had intended to rescue had been slaughtered by Hutu killing squads.<sup>94</sup> Similar incidents

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<sup>87</sup> See, e.g., ANNE ORFORD, *READING HUMANITARIAN INTERVENTION: HUMAN RIGHTS AND THE USE OF FORCE IN INTERNATIONAL LAW* (2003); Frédéric Mégret, *Responsibility to Protect (Others) v. the Power of Protecting Oneself: Beyond the “Salvation” Paradigm*, SECURITY DIALOGUE (Forthcoming 2010).

<sup>88</sup> See A. J. Kuperman, *Humanitarian Hazard: Revisiting Doctrines of Intervention*, 26 HARV. INT’L. REV. 64 (2004).

<sup>89</sup> Anne Orford, *Muscular Humanitarianism: Reading the Narratives of the New Interventionism*, 10 EUR. J. INT’L. L. 679, 695 (1999).

<sup>90</sup> See sources cited *supra* note 17.

<sup>91</sup> Orford, *supra* note 87, at 197.

<sup>92</sup> ROMEO DALLAIRE, *SHAKE HANDS WITH THE DEVIL: THE FAILURE OF HUMANITY* 451–52 (2004).

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

ensued throughout the Rwandan conflict.<sup>95</sup> Yet, while the international community failed to halt the genocide, it was the Rwandan Patriotic Front (“RPF”), consisting of Tutsis and moderate Hutus, that ultimately put an end to the genocide committed by extremist Hutus.<sup>96</sup>

*TWW*’s cultivation, if not promotion, of a unilateral American R2P is juxtaposed against this background and debate surrounding how to deal with massive human atrocities. As will become evident below, *TWW* most clearly flows on some level from the “unilateralist” arguments that Jones advocates. Yet, as I argue above, Jones’ unilateral approach still involves a significant degree of international involvement and approval. Furthermore, I will demonstrate below that *TWW*’s presentation of unilateral humanitarian intervention represents, at least from the perspective of Jones’ interpretation, a more strident and radical form of such unilateral intervention—or alternatively a type of intervention that more clearly befits the descriptive label of “unilateral.” The following sections set out how *TWW* carries out this cultivation of a unilateral American R2P.

#### B. VICTIMS TO SAVE, SAVAGES TO VANQUISH: CULTIVATING A UNILATERAL AMERICAN RESPONSIBILITY TO PROTECT

*TWW* constructs the idea of a unilateral American R2P along two intersecting axes. The first is the personification and visualization of Mutua’s SVS paradigm as applied in the context of genocide and crimes against humanity. Critical to the cultivation of an American R2P is the need to construct hapless victims who are being threatened with death and possibly extermination implemented in the most vile fashion. To recall, in *TWW* this takes place in a fictional African state called the Republic of Equatorial Kundu, which is situated somewhere in northwestern Africa. Kundu contains two primary ethnic populations, a majority Arkutu and a minority Induye population. The state is run by an Arkutu dictator.

The second axis is the unwillingness or inability of other states and/or the international community to do anything effective to stop the atrocities in Kundu. *TWW* constructs the United States as the only savior and sovereign power capable and willing to accomplish this rescue. However, the decision to place American lives at risk requires significant justification. The discussion below examines how *TWW* executes this.

*TWW* develops the concept of an American R2P as the Bartlet Administration is about to enter its second term in office. Jed and his staff are actively engaged in preparing for the Inauguration Day speech setting out the Administration’s objectives for the next four years, and which include its foreign policy goals. During a speech preparation session, Jed reads aloud the following text from a teleprompter that is prepared by the State Department: “America cannot be the world’s policeman. America cannot enforce its own values, its own standards across the world. Yet,

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<sup>95</sup> *Id.*

<sup>96</sup> During the Rwandan genocide, there were instances when Hutus and Tutsis resisted the brutality of the genocide. In one case a Hutu mayor and his staff sought to neutralize the forces that elsewhere sought to decimate the Tutsi population. See Janzen, *supra* note 17.

when it's in our clear and vital interests . . . ."<sup>97</sup> Jed pauses, struck by its bluntness, and remarks to Toby Ziegler, his Communications Director and principal speechwriter, "we're being candid at least."<sup>98</sup> Moved by a desire to deliver a speech which is consistent with his own values (the full extent of which we learn about later) and dissatisfied by the notion of such a blatantly self-interested and perhaps uncompassionate foreign policy, Jed directs Toby (who then instructs Will Bailey<sup>99</sup>) to redraft the language to include a broader vision of "clear and vital interests." Following the preparation session, Jed encounters his Chief of Staff, Leo McGarry, in the hallway. After commenting to Leo about the State Department's "ridiculous" foreign policy language, Jed informs Leo that he received information that 200 Induye, members of the minority ethnic group in Kundu, were killed by the majority, Arkutu-led military in Bitanga, the Kundunese capital. He further notes that Kundu's geographic location is so far removed from his knowledge base that previously he had to reach for an atlas and search for its location. Leo advises Jed that the killing was not the mere consequence of two "warring tribes," but the result of one "tribe" massacring the other, thus foreshadowing the potential for an impending genocide. Leo also informs Jed that 500 American missionaries working in Kundu were being evacuated.

These early sequences present a solidly anti-interventionist foundation from which it is unlikely that an American R2P will be subsequently launched in the event that the death count rises. First, the foreign policy language of the inaugural speech draws a distinct line of demarcation about the proper subject matter jurisdiction that will trigger United States' military involvement in the affairs of other states. The visual sequences establish that on one side of the line there are the country's clear and vital interests—its citizens; and on the opposite side of this line (in this instance) are the "other"—"tribal" (read: primitive) Africans being killed by other "tribal" Africans. Implicit in this speech's language is the deference accorded to state sovereignty as one of the lynchpins of the international state system.<sup>100</sup> While Jed may seek to have the speech sound less self-interested, these early scenes do not suggest that he is willing to sacrifice American lives to intervene in another state's affairs.

Second, Jed and Leo's exchange also signifies the remoteness and otherness of Africa, as epitomized by the relatively unknown nation of Kundu. Its disconnectedness from the realities of American political life and the concerns of everyday Americans make it unlikely and exceedingly difficult to justify the cost and potential risk to the lives of American military personnel who would be required to intervene. As with many

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<sup>97</sup> *The West Wing: Inauguration Part I*, *supra* note 4.

<sup>98</sup> *Id.*

<sup>99</sup> The Will Bailey character makes his first appearance in the fourth season and eventually replaces Sam Seaborn's role as Deputy Communication Director when Sam leaves the White House to contest a congressional election in California. *The West Wing: Election Night* (NBC television broadcast Nov. 6, 2002). Sam recommends Will as his replacement to Toby Ziegler and is hired at first on a contract position to assist in writing the inaugural speech. After Will contributes to the reshaping of the foreign policy section of the speech, Toby recommends that Will be hired on a full-time basis. *The West Wing: Inauguration: Over There*, *supra* note 1.

<sup>100</sup> See text accompanying *supra* note 57.

events that take place in real-life Africa, except where the extraction of natural resources may be implicated, Kundu is largely ignored and relatively isolated from the worries of the world. It exists outside of the radar of American political interests. Kundu's status as a virtual nonentity on the global stage is accentuated by the fact that the ultra-erudite American President, who is often able to recall minute facts about any number of subjects at a moment's notice,<sup>101</sup> is unable to even remember where Kundu is situated.<sup>102</sup>

Kundu's remoteness is also marked by the limited information available to Jed from United States government sources about what is transpiring there. In a prayer breakfast scene that follows Jed and Leo's exchange, Jed is admonished by an African Roman Catholic Archbishop about the necessity of United States government intervention in Kundu.<sup>103</sup> Jed replies that he received very "sketchy" information that morning that the killings were taking place in the capital, suggesting that, while tragic, the killings are isolated to one area and thus do not warrant United States military intervention. Archbishop Kintaka replies that the killings were not isolated to the Kundunese capital but had spread to the countryside, thus revealing that Jed is clearly lacking material information about the true nature of an impending human crisis. The Archbishop asks rhetorically, "[i]f mass genocide had broken out in a small European country, would your intelligence briefing this morning have been quite so sketchy?" In replying, "No," Jed is forced to ashamedly concede his government's unequal treatment toward humanitarian crises in Africa.<sup>104</sup>

The construction and importance of the savior in the build-up to a unilateral American R2P in Kundu is inextricably linked with the imagery of the victim and the savage. The more sympathetic the victims are and the greater the risk of harm that may befall them, the more worthy they are of saving and the greater the calling or inner pull for the savior to intervene. Similarly, the more barbaric the conduct of the savages is, the greater the need and sense of purpose for the savior to vanquish the perpetrators of the vile crimes.<sup>105</sup> These themes become significant as the episode progresses and the construction of the victim class and the indignities that they suffer begins to take shape. Although we learn from Jed and Leo's discussion that the Induye are being killed by the Arkutu, the characterization and construction really begins during Jed's prayer breakfast, introduced above, where Archbishop Kintaka reports to Jed that "thousands upon thousands of *African children* will die unless the U.S. intervenes. Tens of thousands of

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<sup>101</sup> See, e.g., *The West Wing: Enemies* (NBC television broadcast Nov. 17, 1999); *The West Wing: Lies, Damn Lies and Statistics* (NBC television broadcast May 10, 2000); *The West Wing, The Midterms*, *supra* note 48, for examples where Jed displays his vast erudition and knowledge.

<sup>102</sup> What is even more striking about Jed's lapse in memory is the fact that the subject of Kundu made its first appearance just two seasons prior the genocide plotline, respecting the AIDS epidemic in Africa. *The West Wing: In This White House*, *supra* note 5.

<sup>103</sup> Of significance here is that Jed is a known and devout Roman Catholic. In this scene, the Archbishop implicitly appeals to Jed's faith as a Roman Catholic in advocating for an American intervention in Kundu.

<sup>104</sup> *The West Wing: Inauguration Part I*, *supra* note 5.

<sup>105</sup> See Kennedy, *supra* note 12, at 1402.

*Kundunese children and their parents slaughtered.*”<sup>106</sup> The symbolization of victimhood is accentuated by the imagery of families and specifically children, arguably the most fragile and innocent of victims, being butchered, when the Archbishop implores the United States to intervene as the only capable force able to accomplish this rescue. Adding to the gravity is the sheer scale of the carnage, expressed as a slaughter of “thousands upon thousands” of African children. The savage in this paradigm also implicitly rears its head, for the unimaginable slaughter of thousands of innocent children evokes nothing but immense and grotesque horror caused by individuals governed by base savagery and depravity.

In addition to the urgings of Archbishop Kintaka in a private gathering, the apparent urgency of an American rescue is pressed upon in a more public setting by members of the White House Press Corps. During a White House press briefing, the Press Secretary, C.J. Cregg, announces that the death toll in Kundu has reached 15,000. Yet, apart from revealing this number, C.J. is unable to answer a variety of questions about what is actually transpiring on the ground in Kundu, thus demonstrating her (and by extension the Administration’s) ignorance. During the briefing, White House reporter, Danny Concanon, recounts the horror of a recent massacre in Kundu where an Arkutu-run radio station incites its listeners to cleanse the nation of the Induye minority, resulting in one incident where approximately eight hundred Induye are cut down by machetes in a church where they are seeking refuge. After concluding the account, Danny asks, “[s]o...my question is, is the President going to send U.S. troops in to knock this off?” C.J. responds that the White House is monitoring the situation closely; a rather generous description given her inability to answer previous questions. Danny replies sarcastically, “I can tell.”<sup>107</sup>

These scenes invoke the imagery of victims and savages but also speak to a larger and perceived civilization deficit that an American intervention may hopefully give way to remedying. As Mutua explains, human rights discourse, as constructed by Western states and activists, calls for Western saviors to take on third world savages—a battle between good and evil.<sup>108</sup> However, as he further suggests, savage governments are merely presented as stand-ins, conduits for the real culprits—that is, the culture which allows for the savage dictator to take power and the savagery to occur in the first place.<sup>109</sup> Kintaka’s description of the children and families being brutally slaughtered is meant to invoke the immense gravity of the threat posed to the most innocent of victims, as is Danny’s similar recounting of the fate of those huddled and seeking refuge in the confines in a church. Yet these descriptions also signal the very thing that Mutua draws attention to—the apparent savagery of Kundu’s culture (a fictional substitute for real-world African counterparts—e.g. Rwanda, Darfur, and the Democratic Republic of Congo) that could ever allow for the mass slaughtering of children and the hacking away of people in a place of worship. When intervention is

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<sup>106</sup> *The West Wing: Inauguration Part I*, *supra* note 5.

<sup>107</sup> *Id.*

<sup>108</sup> Mutua, *supra* note 12, at 201–02.

<sup>109</sup> *Id.* at 203.

called for, it is on one hand an explicit call to stop the savagery by force in an immediate sense, but it is also an implication to provide the necessary space so that the missionaries who were evacuated (the euphemistically characterized “clear and vital interests” in the draft inaugural speech) can return to the “savage” culture that spawned such killings and perhaps restore to it or teach it lessons in civilization.

The particular messengers in these scenes, Archbishop Kintaka and Danny, also have significance with respect to the constituencies they represent as outsiders pressing the Administration. Jed is implored to listen to and assist Archbishop Kintaka, a Roman Catholic who represents a “civilized” Africa touched by Christianity. As Jed is known to *TWW* viewers as a devout (although at times questioning) Roman Catholic, the Archbishop’s admonitions to Jed also serve as an implied religious instruction about Jed’s role as a Catholic, who as President has the power to stop the massacres and suffering of God’s children.<sup>110</sup> Also, as a voice for the putative victim class and through his position, Archbishop Kintaka has the type of access that few others have to beseech the assistance of the Commander-in-Chief of United States military forces. Danny, on the other hand, as a left-leaning member of the American press, is the public’s “watchdog” reporting on affairs of state ensuring that the Administration is acting appropriately in the public’s best (perceived) interests or at least in the interests of those who agree and support a more liberal and interventionist agenda to which Danny subscribes and advocates. From Danny’s perspective, an interventionist government mandates sending United States military forces to Kundu “to knock this off.” Through his question to C.J., he makes the implied argument that it is the President’s and the United States’ duty to deal with such issues in the manner he prescribes.<sup>111</sup>

While these sequences are instrumental in the construction of the victim and savage classes, they play functional roles in helping to frame the importance and difficulty of the task that faces the savior. Concurrent with the external pressure exerted by Danny and the Archbishop to intervene in Kundu, a similar pressure mounts amongst those working in the Administration to intervene and assume the mantle of savior that is expected and which some of them seem eager to fulfill. The tension arises between wanting to rescue victims from massacre and the costs of sending American soldiers who may lose their lives in such a venture, coupled with the lack of public support. Furthermore, there is the philosophical tension that emerges about the use of United States military power to correct perceived injustices wherever they occur and the consequences that such actions have on state sovereignty.

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<sup>110</sup> The use of religious duty and moral prescriptions to persuade the administration to act in a certain manner is something *TWW* explored in an earlier episode relating to the death penalty. *The West Wing: Take This Sabbath Day* (NBC television broadcast Feb. 9, 2000).

<sup>111</sup> Danny is a supporter of the administration who sympathizes with its objectives and progressive agenda. Yet Danny is critical of the administration when it fails to take bold positions and fails to live up to the expectations of its supporters. *The West Wing: Let Bartlet Be Bartlet*, *supra* note 44. The role of Danny’s character is to urge the administration, through questioning and writing articles, to act in accordance with the expectations of its supporters.

These tensions are in part illustrated in an argument between Will Bailey and Toby. Will, who is tasked with the duty to revise the foreign policy section of the inauguration speech, plays a pivotal role in accentuating this tension and instigating the push to intervene in Kundu. As an outsider who has been contracted to assist Toby, Will is not hindered by the long-term and entrenched concerns about the potential political fallout that may arise from the loss of American life should a military intervention in Kundu be ordered. As he begins his assignment of revising the foreign policy section, Will reviews many of Jed's old speeches to get a sense of the latter's tone and style of speaking. During the course of his research, Will is given a speech that Jed delivered as a United States Congressman but had stricken from the congressional record. Using this as a basis to advocate for United States intervention in Kundu, Will approaches Toby excitedly with Will's sister, Elsie<sup>112</sup> listening in the background:

- Will: (Reading from Jed's speech) "America needs a new doctrine for a new century, based not just on our interests but our values across the world."
- Toby: Define those values for me please.
- Will: I don't have to, the President of the United States already has. (Will continues reading,) "[w]e are for freedom of speech everywhere, freedom to worship everywhere, freedom to learn for every child."
- Toby: Just out of curiosity, how are you gonna enforce a universal, global right to education?
- Elsie: The same way the U.S. enforced anything it wanted in the middle part of the twentieth century. Somebody called our father.
- Toby: What exactly are you doing here, anyway?
- Elsie: The First Lady likes my jokes.
- Toby: (Sarcastically) Excellent.
- Will: (Will continues to read from Jed's speech) "It is our duty to give more than just our support, we must give our strength, diplomatically, materially, and if need be, militarily."
- Toby: (Overlaps with Will) "...and if need be, militarily." I read it I think about sixteen years ago. It was about El Salvador, and he had it stricken from the record and there was a reason! (Toby becomes increasingly agitated).
- Will: What?
- Toby: I don't know, but things have reasons!
- Will: Do they?
- Toby: Yes they do!
- Will: Okay, but C.J. just this morning put the body count at 15,000!

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<sup>112</sup> Elsie is Will's younger sister. Within *TWW*'s fictional world, their father, Tom Bailey, is a famous United States general who was assigned to NATO headquarters in Brussels. While Will is working on contract with the White House, he manages to bring his sister along. She later secures a position writing for the First Lady. For further discussion about Tom Bailey as a military figure and his apparent impact within the storyline in encouraging the intervention, see *infra* text accompanying notes 123 and 127.

- Toby: You're talking about Kundu?! That's what the hell this is about?!
- Will: We're talking about everything. (Will reads from Jed's speech again) "And freedom from the tyranny of oppression, economic slavery, religious fanaticism . . . ." Tell me if any of these describe anyone we know.
- Toby: This isn't what I meant by drafting "new language".
- Will: (Perplexed) What did you mean?
- Toby: Making the old language sound better!

(Toby and Will look at each other briefly followed by Toby momentarily averting his head and eyes downwards—seemingly ashamed by the banality of cosmetically improving the State Department's language that seeks to do nothing, while a genocide is taking place. He then raises his head returns his attention to Will).

- Toby: You're asking the two of us to create foreign policy by ourselves. That's usually not a good idea. You got your Pentagon, the N.S.C.,<sup>113</sup> and, what do you call it, the State Department?!
- Will: You, and Leo McGarry and Josh are his senior counselors and it's not like he doesn't already want to go there.
- Toby: This language proposes a new doctrine for the use of force. That we use force whenever we see an injustice we want to correct. . . like Mother Theresa with first-strike capabilities.
- Will: Damn right!
- Toby: (Scoffs) You've had too many dinners with daddy. Please go back to finding new language for the foreign section!
- Will: Yeah, I should. (Will begins to walk away and turns back to address Toby). I'm only working here another four days.
- Toby: But what?
- Will: He'd do a radio address proposing free liposuction to every child of woman born if you wrote it for him.
- Toby: You're wrong. And if he did I'd be fired shortly thereafter.
- Will: Maybe, but ten pounds lighter (Will walks out of Toby's office into his own office).<sup>114</sup>

This colloquy marshals some important insights both regarding the use of substance and tone in the cultivation of a unilateral American R2P. First, with respect to the substance of the dialogue, it establishes through a recitation of an earlier speech, Jed's fundamental beliefs about the United States' role in enforcing a human rights regime, through armed force if necessary, to vanquish "evildoers" who engage in oppression, religious fanaticism or economic slavery. In Jed's (and Will's) mind, there is a significantly synonymous relationship that is forged between American values and human rights norms. This relationship stridently casts aside the concerns for state sovereignty to advance these American values that are

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<sup>113</sup> N.S.C. stands for the National Security Council.

<sup>114</sup> *The West Wing: Inauguration Part I*, *supra* note 5.

considered inherently beneficial. Because Jed is *TWW*'s principal savior, it is his opinion that counts—for while the President receives advice and counsel from various advisors, it is ultimately, for all intents and purposes, his decision to send United States soldiers into harm's way.<sup>115</sup> Yet, notwithstanding his presumed desire to send United States troops to Kundu, in furtherance of the views conveyed through this earlier speech, he clearly is not prepared to make that commitment just yet. This is evident from the combination of two factors: his speech having been stricken from the record at his request, and his decision not to send any military forces or engage in other direct measures in Kundu. What results is a crucial tension that the primary savior and his staff must resolve: the belief that the United States has a legal and moral duty to spread and enforce core American values by protecting innocent victims whose human rights are being violated versus possibly losing American lives in such a venture while potentially destabilizing international relations, violating international law, and undermining state sovereignty in the process.<sup>116</sup>

While Toby's arguments against the unilateral use of force appear objectively reasonable, for the reasons suggested, they are nevertheless made to appear and sound deficient through the use of tone in the dialogue. This tone is manifested particularly through Toby's facial expressions and apparently growing frustration at having to defend a policy that contradicts the operating principle of the Administration—that government should act as an instrument of good.<sup>117</sup> As Toby suggests, the reformulation of foreign policy and the radical shift that Will proposes should not normally take place at the mere urging of two speech writers just days before a major public address, and without significant consultation with other departments and agencies of the executive branch. Furthermore, the deployment of United States soldiers to correct injustices whenever the President deems it necessary, to put it mildly, is not only problematic from the perspective of state sovereignty and international law, but potentially smacks of imperial arrogance and the imposition of foreign power disguised as human rights legal enforcement. Yet, the tenor of the scene and direction of the dialogue suggests that while Will and his sister present a naïve and perhaps dangerously cavalier perspective on the use of force more generally, they are ultimately the ones who appear to be imbued with courage, morality, certitude, and a sense of purpose about what American military power should be used for. This is illustrated by the seeming banality of Toby admonishing Will to make cosmetic changes to the State Department's text,

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<sup>115</sup> While Article I, section 8, clause 11 of the United States Constitution gives Congress the power and authority to declare war, United States Presidents have nevertheless engaged the United States military in various conflicts without formal congressional authorization. See HOWARD ZINN, *DECLARATIONS OF WAR: CROSS-EXAMINING AMERICAN IDEOLOGY* 124-127 (1990).

<sup>116</sup> Jed and Toby's reluctance to intervene corresponds roughly to the unwillingness of the Clinton administration at the time of the Rwandan genocide to send United States military forces given the fallout and failure to establish the rule of law in Somalia. The visual images of fallen American soldiers being dragged through the streets of Mogadishu that were displayed on international networks certainly had some impact on the willingness of the United States government to contemplate future military interventions. See Donald M. Payne and Ted Dagne, *Rwanda: Seven Years After The Genocide*, 13 *MEDITERRANEAN Q.* 38, 39 (2002).

<sup>117</sup> See *supra* text summarizing Toby's argument to Jed about the end of the era of big government and accompanying note 41.

transforming it to avoid seeming too cold and self-serving in the midst of a genocide transpiring on “their watch.” Through Toby’s facial expressions, particularly after he asserts that the purpose of the revisions is “to make the old language sound better,” he effectively expresses a non-verbal statement that contradicts his stated position to Will. Through these non-verbal cues, the viewer is invited to detect and share in Toby’s own doubts about his otherwise sound observations. Toby’s level of discomfort about finding reasons not to intervene or advocate for intervention is also magnified by his level of anger at having to argue with Will and advocate for the status quo, which he questions deep down. Yet throughout much of the first two episodes of the Kundunese genocide storyline, Toby tends to be the consistent voice against intervention, fighting his own inner impulses about the robust role and duty of government.

After learning that the American missionaries have been evacuated from Kundu, Jed is left to consider what to do next. He can simply denounce the massacres and remain true to the current policy of non-intervention except where the United States’ clear and vital interests are at stake, or he can take steps that move beyond these narrow boundaries. In a step moving him perhaps slightly towards military intervention, Jed summons (one of) his Assistant Secretary of State, Bob Slattery, and asks about any further information on the killings in Kundu. Bob informs Jed that there is little available information, as the United States embassy in Kundu is outfitted with only a small staff and without any Central Intelligence Agency presence, further conceding that Archbishop Kintaka’s sources are more extensive than that of the United States government. Jed orders Bob to have a force depletion report prepared advising how many personnel would be lost if he were to send United States military forces to intervene and stop the genocide. Furthermore, Jed instructs that he wants this report to be done surreptitiously without the knowledge of the Secretary of Defense, Miles Hutchinson, with whom Jed has an antagonistic relationship, and whom the audience comes to realize opposes any military intervention in Kundu.<sup>118</sup> Jed’s conversation with Bob highlights a key component of Jed’s reluctance to deploying United States troops: the risk of losing a high number of American lives (and implicitly the political ramifications that it may produce) weighed against the many more African lives that might be saved in the process.

As Jed contemplates the possibility of intervening in Kundu, he also faces institutional opposition within the executive branch. This opposition is rooted specifically within the State Department and the Department of Defense, populated by officials and bureaucrats who want Jed to let them exclusively dictate and craft policy, rather than the President doing this.<sup>119</sup>

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<sup>118</sup> The task is given to a military officer assigned as an aide to the National Security Advisor. *The West Wing: Inauguration Part I*, *supra* note 5.

<sup>119</sup> In one scene, Will meets with an Assistant Secretary of State for Public Affairs, Bryce Lilly. Will advises Lilly that Jed was dissatisfied with the State Department’s foreign policy language. Lilly resentfully informs Will that “this White House has to be careful about the use of force. It’s a hostile Congress... This President can’t write himself a blank check when it comes to foreign policy. Especially this President.” Will responds, “Especially this President...because of the clause in Article I [sic] that says not every President gets the full powers of Commander-in-Chief.” *The West Wing: Inauguration Part I*, *supra* note 5.

The exposition of this internal opposition, in its own right, plays a role in cultivating support for the intervention in Kundu. It does so by creating a negative association between the anti-interventionist stance and the negative character traits of those advancing this position. This is exemplified by the following dialogue between Leo McGarry, Jed's Chief of Staff and Miles Hutchinson, the Secretary of Defense, regarding the potential for intervention. Miles is demonstrably resistant to United States military forces being sent to Kundu.

- Leo: What's the general thinking in Kundu?
- Miles: That we should support all the international diplomatic efforts to . . . . (Pauses) You know the U.N.'s already made overtures to the Arkutu.
- Leo: That's what's happening at the State Department. I want to know what's happening at Central Command.
- Miles: If you mean militarily, we're gonna want to supply the bordering countries.
- Leo: That's not what I mean. We're getting [intelligence] that isn't making it onto CNN, but that's a matter of couple of hours, truly. Horrible accounts of mass slaughtering that should make us at least want to investigate whether there's a genocide.
- Miles: Lee lost 10,000 at Gettysburg--didn't make it genocide.
- Leo: 'Kay that's what I'll go to the President with.
- Miles: In our case, we'd lose closer to a thousand which is pretty stupid. Magnificently so, when we realize we're talking about a guy who's never led an army.
- Leo: A) the guy is the President!; B) he's been leading one for three years, fifty-one weeks, and three days, how much more training would you like him to have?; and C) it's not a thousand, we saw a force depletion report, it's a hundred and fifty.
- Miles: You saw a force depletion report?
- Leo: (Pauses realizing that he revealed information that was not supposed to reach Miles). Yes.
- Miles: How did he see a force depletion report?
- Leo: Look . . . from time to time, just to expedite things, Nancy<sup>120</sup> will . . . .
- Miles: Nancy's out of the country. It was her aide.
- Leo: The guy was following a direct order.
- Miles: I have no doubt he was. That's my problem Leo.
- Leo: I don't give a damn what your . . .
- Miles: What?!
- Leo: I said I don't give a damn what your problem is Miles! The man wants to know if he sends troops, how many are gonna die.
- Miles: And if he wants to see force depletion, he asks me.

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<sup>120</sup> Nancy McNally is the National Security Advisor.

- Leo: He asks you and three days manage to go by before he sees it, Mr. Secretary. Yet miraculously the Wall Street Journal, on day two, the number's inflated all to hell. It's a hundred and fifty, not a thousand.
- Miles: And that's acceptable to you in Kundu?
- Leo: I don't know what you mean, when you say, "in Kundu". Naah. Yeah, I do. (Leo turns away disgusted).
- Miles: Go to hell. (Miles walks out of the room).
- Leo: Okay. (Leo slams two folders onto the table knocking over a glass of water).<sup>121</sup>

From this scene, the position against intervention is strongly linked to the negative character, obstructionist tactics, and arrogant tone of Miles who the audience is made aware has an antagonistic relationship with the show's lead character and principal savior, the President. For instance, Miles flippantly diminishes the possibility of genocide transpiring by raising the death of Robert E. Lee's 10,000 soldiers during the United States Civil War. This reference connotes three ideas. First, it suggests that the massacres in Kundu are merely the natural consequence of an internal civil war and thus do not necessitate intervention by external forces. Second, it also advances the notion that the killing of ten thousand people generally, even if it does not occur during war, does not constitute genocide. Furthermore, the audience comes to realize that Miles' argument against losing a significant number of United States troops is based on a patently false and inflated estimate—that 1000 troops would be lost instead of the smaller 150-troop estimate. In addition, Miles' objections also rest upon the notion that Jed does not have the moral authority to send troops into combat since he has never even served in the military, while Miles' tone suggests that he, as Secretary of Defense, does hold such moral authority.<sup>122</sup> Fundamentally, Miles' character is one who will evidently conceal genuine and pertinent information from his otherwise likable boss (likable from the perspective of the audience), will spread false information in the news media to advance his own position, and will question Jed's authority to send soldiers pursuant to Jed's legitimate authority as Commander-in-Chief. The position against intervention is in part therefore impugned through a constructed guilt-by-association with an odious character who vehemently opposes such intervention.

This terse dialogue also helps to cultivate an obligation to intervene in Kundu in another sense. Unlike Will's argument to Toby, which is mounted on the basis of Jed's congressional speech, and stresses positive foundational reasons for a United States intervention in Kundu—the spread of American values and enforcement of human rights norms globally—Miles and Leo's dialogue sets up the case for intervention predicated on a negative association of guilt and shame attributed to Miles' invidious perspective and arrogant attitude. Miles' fundamental objection to

<sup>121</sup> *The West Wing: Inauguration Part I*, *supra* note 5.

<sup>122</sup> This sentiment is also echoed in the conversation between Will and Assistant Secretary of State, Bryce Lilly where the latter notes that Jed, in particular, cannot write himself a blank check when it comes to redrafting foreign policy to include the use of force. *See supra* note 119.

intervening rests on an implied racial argument disguised as national interest—namely that 150 American lives are not nearly worth sacrificing for thousands of African/Kundunese lives being taken during genocide. This becomes evident when Miles asks Leo, “[a]nd that’s acceptable to you in Kundu?,” thus implying that the loss of 150 American soldiers might be acceptable if the lives that were being saved were somehow worth more—both in cultural and geo-strategic terms. The odious implication of Miles’ rhetorical question registers with Leo whose reaction is visceral and provokes a look of disgust followed by the throwing of his documents on the table. Miles’ cruel indifference to the circumstances of the Induye ties back to the disparity that Archbishop Kintaka observed earlier in his dialogue with Jed by asking if his briefing regarding the massacres in Kundu would have been quite so sketchy had genocide broken out in a small European country. Yet, for individuals such as Miles, the extent to which the United States should be involved is relegated to “supporting” international diplomatic efforts and supplying states bordering Kundu. This type of conduct gives the appearance of “doing something” but ultimately accomplishes little in the actual saving of lives.

Through Leo and Miles’ dialogue, guilt and shame are used as instruments to cultivate support for a military intervention in Kundu; it is part of an effort at priming the audience to view the concept of an American R2P positively. The next part of the storyline is geared toward searing this negative association into Jed’s conscience through the efforts of the only individual amongst his staff who has openly advanced the use of American military force to further human rights. This is seen when Jed stops by Will’s office to check on the status of the redrafting of the foreign policy section. On Will’s desk, Jed notices the speech that he gave as a member of Congress that was the subject of Will’s argument with Toby. He asks rhetorically, while keeping his eyes downward and fixed on the text, “Why is a Kundunese life worth less to me than an American life?” To Jed’s surprise and in a remarkable display of speaking truth to power, Will responds, “I don’t know sir, but it is.” Surprised by Will’s boldness, Jed raises his eyes to look at Will, and replies, “[t]hat was ballsy.” Will responds, “I won’t be working here long.” Jed asks, “You Tom Bailey’s son?” After Will confirms that he is, Jed states: “[t]alk about the very model of a modern major general.” With a hint of pride, Will replies, “Yes sir.”<sup>123</sup> Jed then walks away. Jed is thus faced, in a rather frank manner by a then-temporary member of his staff, with the disconnect between his true beliefs about the worth of all people and their inalienable rights, which reflect American values on one side, and his reluctance to sacrifice American lives in pursuit of these beliefs on the other; beliefs which he tried to hide in the proverbial closet by having his bold speech stricken from the record.

The challenge to openly act and behave as a global American savior is what is at play in these scenes. Jed and his Administration, who are the principal protagonists, are reluctant to move towards a model of saviorhood

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<sup>123</sup> *The West Wing: Inauguration Part I*, *supra* note 5.

that includes intervention. This reluctance to act as an instrument of good to stop genocide slowly eats away and haunts them.<sup>124</sup> In one respect, they are beset by opposition from individuals such as Miles Hutchinson, who are willing to take affirmative steps to engineer public opposition to intervention by pitching false estimates in the press about potential American casualties.<sup>125</sup> Furthermore, there is the presumption that an administration staffed by individuals who have no military experience (with the exception of Leo McGarry who flew planes in the Vietnam War and sustained injuries) has no moral authority to assume the role of savior and send United States soldiers to potentially perish. In addition, the Administration fears that the American public will be opposed to the loss of American lives, particularly during an operation to save African lives.<sup>126</sup> To these issues, Will (and by reference, his father) serves as the courageous counterpoint to the voices waged against intervention and vacillation within the Administration. Will presents a clear and firm voice that comes from a military background who fully endorses the idea of American blood being sacrificed if necessary to save others who are being slaughtered. He reminds Jed and Toby what they are supposed to represent but have forgotten or are unable to bring themselves to stand for after spending many years warding off political criticisms and threats to the Administration by Republican rivals. The imagery of Will's father, Tom Bailey, as the very model of a modern major general who is willing to ruffle feathers,<sup>127</sup> particularly within the State Department, to enforce American interests and values, is intended to remind Jed that as a Commander-in-Chief, he is falling short of what is expected and perhaps required of him. Or, viewed another way, the invisible allegory of Tom Bailey is used to remind Jed that, as Commander-in-Chief, he has the legal and moral authority and prerogative to use military force when necessary to advance American values. Furthermore, the viewer is invited to believe that the elder Bailey, who represents a model soldier and leader within the military establishment, gives his imprimatur to Will's argument.

As Inauguration Day approaches and the growing death count in Kundu continues unabated, the increasing unease attributed to not intervening mounts on the staff's conscience, even as they are trying to

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<sup>124</sup> When Toby confronts Will about the latter's statement to Jed, he chastises Will for getting into Jed's "head this close to something this important, [that Will has] gotta keep the train on the tracks." Toby informs Will that the genocide "haunts him, it haunts everyone." *The West Wing: Inauguration: Over There*, *supra* note 1. Toby's central point is that the government and the administration need to keep focused.

<sup>125</sup> The pettiness of Hutchinson's character is also signified by his resentment that Jed ordered a force depletion report behind his back. The audience learns that in retribution, Hutchinson is feeding Danny Concanon, a reporter, information that would lead him to information surrounding Jed's order to assassinate a foreign leader the year before, based on evidence that the leader was responsible for planning terrorist attacks in the United States. *The West Wing: Inauguration: Over There*, *supra* note 1.

<sup>126</sup> As the final revisions to the speech are being discussed, Josh senses Will's frustration about the failure to take a bold stance in Kundu. He says to Will: "The President takes seriously the question of whether or not to risk American blood...he can't just send people someplace." Will asks: "Where does the President's Catholicism distinguish between American blood and other kinds of blood?" Josh replies: "It doesn't. The voters do. The voters that you champion and that I can't stand." *The West Wing: Inauguration: Over There*, *supra* note 1.

<sup>127</sup> At the beginning of Will's meeting with Bryce Lilly discussed in *supra* note 119, Lilly mentions having unpleasant run-ins with the Will's father. *The West Wing: Inauguration Part 1*, *supra* note 5.

unwind in a bar after weeks of hard work crafting the inauguration speech and dealing with the news from Kundu. During an exchange between Toby, C.J., and Josh, the notion of potentially sacrificing American soldiers to save African victims starts to become reconciled. It is the duty of some saviors (read: United States soldiers) to perish in an important cause to save humanity:

- C.J.: Guy across the street is beating up a pregnant woman, you don't go over there and try and stop it?
- Toby: Guy across the street is beating up anybody, I like to think I'd go over and try to stop it. But we're not talking about the President going to Asia, or the President going to Rwanda, or the President going to Qumar.<sup>128</sup> We're talking about the President sending other people's kids to do that.
- C.J.: That's always what we're talking about and in addition to being somebody's kids, they're soldiers and sailors and if we're about freedom from tyranny, then we're about freedom from tyranny, and if we're not, we should shut up.
- Josh: Yes.
- Toby: (To Josh) Back at the office, you were telling Will . . . .<sup>129</sup>
- C.J.: (Cutting Toby off) He said that to Will because that's what we say.
- Toby: You weren't even there.
- C.J.: It's what we always say.
- Toby: On Sunday, he's taking an oath to ensure domestic tranquility.
- C.J.: And *to establish justice and promote the general welfare*. Stand by while atrocities are taking place and you're an accomplice.
- Toby: I'm not indifferent to that, but knucklehead self-destruction is never gonna burn itself out. You really wanna send your kids across the street into the fire?
- C.J.: Want to? No. Should I? Yes.
- Toby: Why? And don't give me a lefty answer.
- C.J.: A lefty answer's all I got.
- Toby: Why are you sending your kids across the street?
- C.J.: 'Cause those are somebody's kids too.<sup>130</sup>

In justifying the potential sacrifice of United States soldiers (*qua* saviors), *TWW* once again reinforces the metaphor of the victim. In C.J.'s formulation, the Induye are allegorized as a fragile pregnant victim across the street while American soldiers are to play the noble rescuers halting the one-sided assault.<sup>131</sup> The metaphor of the pregnant woman of course implicitly involves more than just the prospective victimization of the

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<sup>128</sup> A fictional Middle Eastern country which serves as a hotbed for Islamic terrorism.

<sup>129</sup> See *supra* note 126.

<sup>130</sup> *The West Wing: Inauguration: Over There*, *supra* note 1.

<sup>131</sup> The imagery of an assault on a pregnant woman taking place across the street, instead of across the ocean also serves to diminish the remoteness of Kundu and the victims of the genocide taking place there. Given the assault's new proximity as conveyed through C.J.'s metaphor, one cannot so easily ignore what is transpiring.

expecting mother (the victim that we are able to see), but also includes danger to the life of the unborn fetus. Thus, there are two potential victims at risk. Furthermore, one can hardly dispute that a pregnant woman being assaulted or otherwise in distress cannot but evoke, except in the most compassionless of individuals, a compulsion to rescue. However, while American soldiers may represent someone's children that the United States President may be deploying to rescue the children of others, the American children clearly have a higher and perhaps secular "missionary" purpose and agency as soldiers and sailors to ensure freedom from tyranny and genocide. This moral duty is tied to enforcing a larger presidential obligation—an oath to establish justice and promote the general welfare. Notably however, the general welfare that C.J. refers to is not merely a domestic one, but one which contextually extends to the whole world, conceptually, a global American protectorate. As we reach the end of their colloquy, C.J. once again returns to a recurring fundamental point in order to justify risking American lives - that the Kundunese are defenseless children whose lives are threatened, and cannot be saved without the deployment of American "children." Notably, as soldiers and sailors, the American "children" have the capacity to act as grown-up agents of resistance to the Arkutu *génocidaires*, and enforcers of international human rights norms and American values, whereas the African Induye children (literally and allegorically) are clearly lacking in this capacity.

The necessity to sacrifice American blood is also justified by the invocation of the Holocaust. The brutality of the Holocaust has been captured in various films and has been etched to some degree in the American viewing public's consciousness. It represents to many the failure of the international community and nation-states, including the United States and Canada, to intervene and stop one of the most brutal and orchestrated exterminations in human history at an earlier stage.<sup>132</sup> The failure to stop Hitler prior to World War Two becomes poignantly and succinctly appropriated to stop the Kundunese genocide. In the following exchange between the show's two Jewish-American senior staffers, Josh invokes the symbolic power of the *Shoah* to justify intervention in Kundu to Toby:

- Josh: ...I'm not talking about fighting wars. Intervening when there's violence against people who are defenseless.
- Toby: Fine, but if we go here, it means they can go there, and look, more injustice over there.
- Josh: We elect these people. Not for nothing, but if we'd been the world's policemen in the '30s, you and I . . . .
- Toby: We would have had a lot more relatives.

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<sup>132</sup> While both the United States and other Allied states were committed to defeating the German military machine, rescuing those targeted by the Nazis for extermination was not necessarily a primary concern. This lack of concern is exemplified by the refusal of the United States and Canadian governments to accept many Jewish refugees arriving on boats from Europe. IRVING ABELLA & HAROLD TROPER, *NONE IS TOO MANY: CANADA AND THE JEWS OF EUROPE, 1933-1948* 280 (2000); NINETTE KELLEY & MICHAEL TREBILCOCK, *THE MAKING OF THE MOSAIC: A HISTORY OF CANADIAN IMMIGRATION POLICY* 252-256 (1998); and Naomi S. Stern, *Evian's Legacy: The Holocaust, The United Nations Refugee Convention, and Post-War Refugee Legislation in the United States*, 19 *Geo. Immigr. L.J.* 313 (2004).

Josh: That's right.<sup>133</sup>

The short dialogue merges the imagery of the millions of European Jews who were murdered during the Holocaust with the defenseless Induye who could be saved if the United States would only fulfill its role as the world's policeman in the 1930s. *TWW* here utilizes the example of the Holocaust as a lost opportunity to save millions of lives due to the failure to intervene at an early stage to prevent untold tragedy as a bridge to justify support to intervene in modern day conflicts in Africa. Furthermore, the language in the dialogue seeks to make more palatable the nature of the military action; it is an intervention, a police action waged to rescue a defenseless people, as opposed to war, which is perhaps waged for less noble purposes such as conquest, acquisition of wealth and colonization. Josh's sense of obligation to stop another genocide, as an individual who lost family members he never got to meet due to the Holocaust, is emphasized in the closing scene of *Inauguration Part I* where he witnesses on a television screen, images of corpses lying about the ground – a painful reminder of “never again” remaining an empty platitude.

Following several days of hearing news of the events in Kundu, sarcastic media questioning by the White House Press Corps (that C.J. receives the brunt of), criticism by Archbishop Kintaka, as well as Will's biting remarks, Jed sits in his office in the White House residence to read reports and perhaps distract himself. After reviewing his reports, he decides to watch television. On a wall unit are three small television screens mounted on a top shelf with a larger television screen situated on a middle shelf space below. Jed turns on each screen clockwise starting from the top left screen. On the main screen, he observes the march of the wooden soldiers, a scene from the Laurel and Hardy film, “Babes in Toyland.” The wooden soldiers assemble and begin to march. On the top left hand screen, Jed observes footage of real-life United States troops marching in step with one another. The camera alternates between the two marching scenes and a close-up on Jed's eyes as he intently goes back and forth. He then picks up a telephone and advises that he wants his senior staff to assemble immediately. What we learn is that after several days, since first learning about the outbreak of “violence” in the Kundunese capital, Jed makes the monumental decision to deploy United States forces to stop the developing genocide in Kundu. Through the juxtaposition of real-life United States soldiers against the wooden toy soldiers, Jed comes to the realization that the military he commands does not exist for mere display, entertainment or aesthetic purposes, but serves a crucial purpose to engage in military combat when required and perhaps more crucially to save others' lives.

Having decided to break with established policy rather precipitously, Jed approaches the new cause of combating genocide with great vigor and purpose. Absent in his voice is the pre-occupied and guilt-ridden tone. In its place is a more confident, deliberate and assertive quality. Invoking his earlier El Salvador speech, which he had stricken from the congressional record (and with some significant modifications), Jed proclaims a new

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<sup>133</sup> *The West Wing: Inauguration: Over There*, *supra* note 1.

doctrine for the use of force in defense of American values with calm and purposeful resolve:

We're for freedom of speech everywhere. We're for freedom to worship everywhere. We're for freedom to learn for everybody. And because in our time you can build a bomb in your country and bring it to my country, what goes on in your country is very much my business. And so we are, for freedom from tyranny everywhere. Whether in the guise of political oppression, Toby, or economic slavery, Josh, or religious fanaticism, C.J., that most fundamental idea cannot be met with merely our support. It has to be met with our strength. Diplomatically, economically, materially, and if pharaoh still don't free the slaves, then he gets the plagues or my cavalry, whichever gets there first. The U.S. [Trade Representative] will go crazy and say that we're not considering global trade. Committee members will go crazy and say I haven't consulted enough. And the Arab world will just go, indiscriminately crazy. No country has ever had a doctrine of intervention when only humanitarian interests were at stake. That streak's gonna end Sunday at noon.<sup>134</sup>

In addition to the particular freedoms that Jed mentions, three new compelling elements emerge in support of the Administration's shift toward unilateral military intervention. First, in justifying intervention in other countries generally, Jed stresses the potential of terrorists building bombs in other countries and transporting them into the United States. Intervention to extend freedom from tyranny thus involves a component of pre-emptive or anticipatory self-defense to ensure freedom from tyranny for American citizens as well foreigners. The argument for pre-emptive self-defense in the specific context of the Kundunese genocide as it has been laid out seems irrelevant with respect to United States national security; the events in Kundu do not seem to impinge upon the security of the United States or the collective security of any one of its allies. There is no reference, explicit or implied, to any terrorist activity that threatens the United States directly. Jed essentially invokes the right of self-defense provided for in the U.N. Charter, which does not require prior Security Council authorization, to bridge a conceptual gap that empowers the United States government to enter Kundu's territorial space to intervene in the genocide, something the United States cannot otherwise do legally without said authorization. Nevertheless, in so doing, the concept of pre-emptive self-defense, which is already problematic, ends up losing any logical meaning since any state can claim a right to intervene based on the presumption that in any given tyrannical society, bombs can be made, transported and used in another state regardless of evidence. A theoretical possibility is sufficient. The inclusion of a self-defense argument however also seems to contradict the concept of a policy of intervention rooted solely on humanitarian grounds.

Second, Jed's soliloquy also incorporates strong Judeo-Christian religious motifs in building toward an American obligation to intervene. For example, the genocide of the Induye is analogized to the slavery of the Hebrews by the Egyptians in ancient times, and the dispatch of the United

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<sup>134</sup> *Id.*

States military to the ten plagues inflicted upon the Egyptians by Yahweh for refusing to release the slaves. More interestingly though, the power to inflict the plagues was both a divine and violent act, and would suggest that an American intervention in Kundu is of a similar nature, ordered and/or willed by a divine force to halt absolute evil, or at least sanctioned by it. The plague analogy also suggests that the intervention is inexorable and justifiably violent.<sup>135</sup> After advising his staff of his new shift in foreign policy and directing them to redraft his speech in accordance with his new directive, Jed asserts to Leo in private, paraphrasing Isaiah: “[s]et free the oppressed, break every yoke, clothe the naked, and your light shall break forth like the dawn, and the glory of the Lord shall be your rear guard.”<sup>136</sup> As evidenced by his own self-associations with God or as an agent of God, Jed obtains a sense of peace about fulfilling his duty as a Christian and Roman Catholic—one that is missing earlier as he resisted the impulse to intervene.

Third, Jed’s language and tone demonstrate a clear commitment to his new doctrine in the face of anticipated opposition from three key constituencies and the interests they represent: the United States’ interests in global trade that may be impacted; political resentment from members of congressional committees for not having consulted them on this radical shift; and moreover, the fear of Arab states with respect to prospective United States interventions in their countries. Previously, Jed was hesitant to do anything in the face of opposition by the State Department or the Department of Defense, but here he demonstrates that some things are apparently more important than these concerns. Once again, the use of tone is instructive because these legitimate concerns are cast aside and dismissed as the crazed ramblings of various politically-motivated interests in the government, or in the case of the Arab world, an irrational and indiscriminate crazed reaction to a doctrine of intervention. Any legitimate apprehensions concerning conduct authorized in furtherance of such an imperial doctrine are merely swept aside by associating these objections with the expression of insular and petty interests.

The cultivation of an American R2P to stop genocide, crimes against humanity and/or war crimes is predicated on the belief of America’s role in stopping such acts. It is also founded on the concept that the United States is the only state capable of or interested in doing so. The following section deals with the manner in which *TWW* constructs the United States as a savior relative to the international community and to other states, particularly France.

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<sup>135</sup> I am grateful to Karen Crawley for raising this point. Also, as Professors Trevor and Shawn Parry-Giles explain: “*TWW*’s international vision conflates violence and nationalism and expands presidential power over the internal affairs of developing nations. Such nations, largely populated by people of color, are shown as incapable of controlling their own affairs, forcing the United States to use unconventional war tactics when dealing with out-of-control nations where unjust-war tactics seemingly originate and abound.” PARRY-GILES & PARRY-GILES, *THE PRIME-TIME PRESIDENCY: THE WEST WING AND U.S. NATIONALISM*, *supra* note 6, at 141.

<sup>136</sup> *The West Wing: Inauguration: Over There*, *supra* note 1.

C. CASTING ASIDE THE INTERNATIONAL COMMUNITY AND FELLOW  
NATION STATES

*TWW*'s cultivation of a normative unilateral American R2P establishes and exposes viewers to a false dichotomy: the Bartlet Administration has to effectively choose between absolute inaction and its polar opposite, complete unilateral American military action. The Kundunese genocide plotline fields no alternatives along a continuum between these two polar positions, alternatives that may include material assistance to local resistance and United States cooperation and participation with other states or international institutions to intervene pursuant to a U.N. Security Council resolution. This is partly because *TWW* constructs international institutions and other states as unwilling or just out of touch with what is necessary to deal with outbreaks of genocide. This is exemplified during one scene where Jed receives a security briefing (which takes place prior to his decision to deploy troops to Kundu) and asks about any developments with respect to Kundu and the massacres taking place. He is informed that in light of the rising death count, the U.N. General Assembly is debating the issuance of a proclamation. Jed wryly responds, "Well a proclamation ought to do the trick."<sup>137</sup> He is then informed that neighboring families in Kundu are swapping family members because people in the same households are being forced to rape one another with the promise of being spared death.<sup>138</sup> The scene frames and juxtaposes two events—the brutality of forcing family members to rape each other with an out of touch and discordant response to such realities: a debate about whether to even *denounce* such crimes through a flaccid and toothless proclamation.

The U.N., embodied by the General Assembly, is reduced to a quivering mass of indecision and effete inaction in the face of a genocide leaving the United States as the only viable entity to respond. Any potential ability of international actors to affect positive change in Kundu is dwarfed in comparison to the power of the mighty United States President. After Jed elects to deploy military forces to Kundu, he meets with the Kundunese Ambassador to explain in part, his reasons for taking the airport in the Kundunese capital. In the scene, Jed imperiously lectures the Ambassador on the need for United States military involvement in Kundu:

[Kundu is] in the midst of a one-sided slaughtering of an entire people. Both the Secretary-General of the United Nations and the Vatican have pleaded with President Nzele<sup>139</sup> for a cease-fire, and both the U.N. and the Holy Father have struck out to the peril of 115,000 Induye men, women and God knows children, particularly the boys....The heads of Ghana, Nigeria and Zaire have similarly been sent packing. The Red Cross has been denied entry on three separate occasions in the last 10 days. President Nzele has 36 hours to give the command to his troops to hand over their weapons to the 82<sup>nd</sup> Airborne Division of the United States Army. At 36 hours and one minute, I give the order for the 101<sup>st</sup> Air

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<sup>137</sup> *The West Wing: Inauguration Part I*, *supra* note 5.

<sup>138</sup> *Id.*

<sup>139</sup> President Nzele is the fictional military dictator that controls Kundu.

Assault to take Bitanga and run up our flag. (Pause) I skipped breakfast. Anybody want coffee or something?<sup>140</sup>

Jed sets out here the ineffectiveness of international efforts to halt a “one-sided slaughtering” of an entire people. The language is instructive, the Holy See and the U.N. Secretary-General are conjoined and together “plead” (read: beg) for the genocide to stop, but are incapable of doing much else; indeed they “strike out”. African intermediaries are similarly incapable of stopping the genocide and are unsuccessful in persuading a fellow African state from continuing its extermination efforts. Last, an independent and neutral entity, like the Red Cross, is also unable to care for the injured. Conspicuous by its striking absence in this narrative is the U.N. Security Council, an organ with tremendous power, and the only one capable of dispatching a U.N. military force to stop genocide under Chapter VII of the U.N. Charter. Similarly, the African states are presented as failed negotiators, but missing is any discussion or acknowledgment of the potential involvement of regional groups like the Economic Community of West African States Monitoring Group (ECOMOG) force as was seen in Sierra Leone. *TWW* chooses to willfully ignore legal avenues to intervene for the opportunity to give Jed Bartlet a chance to play a quintessential imperial cowboy. Jed cavalierly informs the Ambassador of his intent to take Bitanga and run up the United States flag, demonstrating its ability and willingness to conquer errant states. It is a *fait accompli* waiting to happen. The tone of imperial arrogance comes through in Jed’s language: “At 36 hours and one minute, I give the order for the 101<sup>st</sup> Air Assault to take Bitanga and run up our flag. I skipped breakfast. Anybody want coffee or something.”<sup>141</sup>

International law and its perceived weaknesses similarly come under scrutiny. In particular, the Genocide Convention calls for the legal obligation of states to prevent and punish the crime of genocide.<sup>142</sup> In a press briefing that takes place prior to Jed’s decision to intervene, C.J. is asked by a White House reporter whether the United States is obligated to intervene when genocide is occurring. C.J. responds that the Genocide Convention distinguishes between genocide and acts of genocide – the latter category falling short of the term genocide and thus failing to trigger international obligations to intervene. She then receives follow-up questions asking just how many acts of genocide constitute genocide. Ultimately she refuses to answer the question.<sup>143</sup> Notable of course is the fact that the Genocide Convention does not make any such explicit declaration distinguishing between genocide and acts of genocide—indeed it lists a whole series of acts that can indeed constitute genocide.<sup>144</sup> But moreover, *TWW* once again seeks to make the international legal system appear almost entirely foolish and inadequate by allowing states to escape fulfilling their obligations by simply refusing to recognize when a genocide is occurring. This harkens back to Miles’ earlier statement to Leo arguing

<sup>140</sup> *The West Wing: The California 47th*, *supra* note 5.

<sup>141</sup> *Id.*

<sup>142</sup> Genocide Convention, *supra* note 58, at art. 1.

<sup>143</sup> *The West Wing: Inauguration: Over There*, *supra* note 1.

<sup>144</sup> Genocide Convention, *supra* note 58, at art. 2.

that a loss of 10,000 lives does not make genocide. International legal norms prohibiting genocide can then be avoided by a simple game of semantics or by claiming that there are simply not enough people who have been slaughtered to warrant calling it genocide.

In addition to its negative depiction of the international legal system, *TWW* however saves its greatest disdain for a fellow democracy, France, and particularly, for its unwillingness—rather than a mere inability—to assist in the saving of Kundunese lives.<sup>145</sup> Following Jed’s decision to send United States military forces to Kundu, the French government expresses an unwillingness to even allow the American military access to French airspace, on its way to Kundu. Jed responds to this reluctance in his telephone conversation with his Chief of Staff: “Leo, tell those pony little hairdressers, I’m gonna shove a loaf of bread up their ass!”<sup>146</sup> In this context, the French are constructed as an effeminate body politic (of hairdressers) unwilling to play their (masculine) part, as a modern democratic and military power, in stopping atrocities from further taking place. The scene exploits a pre-existing antipathy toward the French amongst the American viewing public that views the French as arrogant and hyper-critical of Americans and American culture. This was particularly so leading up to the United States-led invasion of Iraq in 2003, where protestors expressed their disgust with the French position by pouring French wine into sewers and renaming French fries as freedom fries. While French opposition to the invasion of Iraq in the real world may have been reasonable, its fictional opposition in the context of stopping genocide is presented as morally questionable. The targeting of France seems particularly gratuitous and intentional for there are many European states whose airspace the United States could access (if even necessary) to be able to reach Kundu which is, according to the storyline, located in northwest Africa, near the Ivory Coast.

*TWW*’s enjoyment in denigrating France in order to promote an American R2P does not stop there. As with other metaphors in *TWW*, the show takes greater efforts to allegorize the French in pejorative terms. During *TWW*’s fourth season and partly concurrent with the Kundunese storyline, Jed’s youngest daughter, Zoey, a Georgetown University student, begins to date Jean-Paul, a young twenty-something French national who is depicted as an arrogant descendant of the French aristocracy, and who at times uses narcotics. A humorous exchange between Jed and Jean-Paul

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<sup>145</sup> Although *TWW* focuses its attention on France in the Kundunese genocide storyline, it also generally represents its other traditional Allies in less than sympathetic ways. For instance, it depicts the fictional British Prime Minister, Maureen Grady, as a hot-tempered political firecracker who must be reigned in and kept under control. *The West Wing: The Wake Up Call* (NBC television broadcast Feb. 9, 2005). Throughout much of *TWW*’s seven-year run, the principal British representation on the series was Lord John Marbury, a fictitious grandson of the very real Lord Louis Mountbatten, the last Viceroy of British India and Supreme Allied Commander of Southeast Asia who was assassinated by the Irish Republican Army in 1979. A friend of the Bartlet family, Marbury is presented as an incredibly intelligent and charming individual yet an irredeemable eccentric with rampant proclivities for womanizing and alcohol. *The West Wing: Lord John Marbury*, *supra* note 5; *The West Wing: Dead Irish Writers*, (NBC television broadcast Mar. 6, 2002). Canadians are characterized as simple neighbors with an inferiority complex. *The West Wing: Dead Irish Writers*, (NBC television broadcast Mar. 6, 2002).

<sup>146</sup> *The West Wing: The California 47th*, *supra* note 5.

typifies the caricature of the French as snobbish and judgmental critics of America:

- Jean-Paul: It is better to work to live, I think, than to live to work.  
 Jed: Right. On the other hand, 20 percent of your youth is unemployed; they're just living to live.  
 Jean-Paul: Yes that is right, but sir we have the best public health care and pension in the world. State-financed pensions are equal almost to income levels.  
 Jed: Yeah, it helps when someone else is picking up the bigger ticket items like a National Defense.  
 . . .  
 Jean-Paul: You see, there is an attitude in your culture. There is an effort to defy all that is European, and that behavior is seen by many to be—  
 Jed: (Dismissively waving off Jean-Paul) Yeah, whatever hang on a second. (Jed speaks with Josh Lyman who comes into the Oval Office).  
 Jed: I'm sorry, Jean-Paul, I'll have to cut this short, Josh has gotten himself into a jam. But I'll see you on the plane tonight and I'll look forward to continue our discussion on, you know, what's wrong with me.<sup>147</sup>  
 Jean Paul: Yes.<sup>148</sup>

The exchange of course does not directly speak to the humanitarian intervention taking place in Kundu. It nevertheless serves the purpose of personifying the French nation in the form of Jean-Paul as a smug, youthful, and aristocratic dilettante who advocates working only to live to enjoy life, rather than taking pride in hard work or its responsibilities as a modern nation seriously. Through Jean-Paul as allegory, France is a nation that can indulge in a publicly-funded healthcare system and provide substantial pensions because it does not need to spend vast resources on a national defense, purportedly because the Americans do this for the French.<sup>149</sup> As discussed above, the audience's acceptance and/or agreement with Jed's decision to intervene is arguably influenced by the characters and what they represent. As Jed struggles, agonizes and finally decides to deploy United States military personnel and take up this perceived obligation to rescue people from mass killings, the show simultaneously suggests that fellow democratic states, and specifically France, are not

<sup>147</sup> Notably here, when Jed states "what's wrong with me", he has transferred all of Jean-Paul's criticisms about the United States onto himself as the personification of the United States. Thus, just as Jean-Paul becomes the embodiment of a critical France and perhaps Europe at large, Jed thus becomes the central metaphor of America through his role as President.

<sup>148</sup> *The West Wing: The California 47th*, *supra* note 5.

<sup>149</sup> This notion that some European states enjoy spending money indulgently is something that *TWW* not only applies to France but also extends to Switzerland. In a fifth season episode, Leo, Nancy McNally (the National Security Advisor) and Bob Slattery (an Assistant Secretary of State) proceed to the Swiss embassy to meet with the Iranian Ambassador. While waiting for the Iranian Ambassador, Nancy comments about the beauty of the room at the embassy. Bob then opines about the Swiss liking nice things. Leo then notes that it is easy to spend lavishly on such things when one does not have to pay for a national defense. Thus once again, the United States is presented as the responsible and burdened adult in the international system. *The West Wing: The Warfare of Genghis Khan*, *supra* note 5.

living up to any similar sense of their responsibility. It is thus left to the United States, because for the French embodied by Jean-Paul are too busy “living to live” while the Induye must merely live to die.<sup>150</sup>

*TWW*'s Kundunese genocide episodes attempt to demonstrate that America is the only capable and willing democratic power that bears the statesman-like maturity to confront acts of genocide. Also, the United States, and Jed in particular, embodies the traits of the masculine hero—his tone and language become more cavalier, violent, and messianic—unlike other states and their lack of leadership. These constructions ultimately are derived from certain realities, but are exaggerated in order to advance the constructed mythology of a unique unilateral American obligation to intervene in order to respond to genocide and humanitarian crises. This is best illustrated in the context of the international response in Rwanda—the real world circumstances that appear to have inspired the Kundu genocide. As mentioned above, the international response (including that of the United States) in Rwanda was certainly wanting and imperfect. Lt. General Dallaire, the commander of the U.N. forces in Rwanda, required and requested more forces and equipment in addition to a sufficient mandate. However, the actual efforts in Rwanda—imperfect though they were—did go beyond mere General Assembly debates about whether to denounce the atrocities through a proclamation. These efforts extended to the Security Council authorizing the peacekeeping mission. Furthermore, unlike *TWW*'s portrayal of France denying access to the United States, France actually dispatched forces into Rwanda. Recalling the discussion above respecting the Bissessero Hills massacre, although French forces made serious errors along the way that cost Tutsi lives, the French at least attempted to do that which the United States was reluctant to do at all. *TWW*'s depiction veers significantly toward mythology by re-imagining a United States response to the genocide in Rwanda. It casts the actors who were involved in Rwanda, the U.N. and France as fundamentally flawed. Therefore, in *TWW*'s re-take of Rwanda via Kundu, the White House is functionally given a fictional opportunity to expiate the sins of the Clinton Administration, and perhaps the United States at large for not having intervened. But in this act of televised absolution, no one else can share in the moment: the United States is permitted to re-imagine itself as deliberative and thoughtful heroes, while the international community and France must pay for their sins in Rwanda through one-dimensional and reified caricatures.

The mythology of an American R2P is solidified by the relative ease and limited number of American deaths that arise from the intervention. In the fourth episode of the Kundunese genocide storyline, which takes place after Jed orders the taking of Bitanga's airport the viewer learns that three American military personnel have been taken hostage by Kundunese

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<sup>150</sup> The Jean-Paul character acquires even more loathsome characteristics as the fourth season advances to its end. Jean-Paul enters the *TWW* world as Zoey Bartlet's love interest. At the end of the season, Islamic terrorists kidnap Zoey during a graduation party. The kidnapping is in part facilitated by Jean-Paul slipping a date rape drug (which he acquired from an Algerian friend he knew in Paris) into Zoey's drink making her dizzy and drives her to go to the ladies room, where the kidnappers abduct her. Although Jean-Paul believes that he has given her the drug ecstasy, he has unwittingly aided in her kidnapping. *The West Wing: Commencement* (NBC television broadcast May 7, 2003).

Arkutu soldiers. The three soldiers are eventually rescued by an American military team sent to secure their retrieval. This is followed by a retaliatory terrorist attack on an American base in a nearby country where the rescue team had trained for the operation. The seventeen individuals who die and the twenty who are injured in the retaliatory attack appear to represent some of the only American casualties from its intervention in Kundu: much less than the 150 estimated deaths in the force depletion report and exceedingly less than the inflated numbers presented by Miles Hutchinson.<sup>151</sup> After the fourth episode devoted to the Kundunese genocide storyline (“Red Haven’s on Fire”), the subject of Kundu rarely returns.<sup>152</sup> The viewer naturally learns nothing about the details and difficulties of stopping a genocide, only that the genocide has presumably ended due to American involvement. It is assumed that once a firm decision was made, United States military forces accomplished their mission with just a few bumps along the way and relatively minimal casualties. The operation is presumed a success. Any doubts about the effectiveness of such a unilateral intervention are left unexplored as the show moves on to covering new and demanding storylines that challenge the Bartlet Administration and retain the viewing public’s attention.

#### D. UNILATERAL INTERVENTION REVISITED

Along with many of its other visionary projects about the role of the United States government as a source of “good” at home or abroad, *TWW*’s Kundunese storyline produces, as the discussion above demonstrates, a wildly fantastical, radical, and imperialistic vision of what an ideal American interventionist state should resemble. To better understand just how far *TWW* pursues its vision of a unilateral American R2P, it may be useful to revisit Jones’ prescriptions regarding unilateral humanitarian intervention and juxtapose them with the *TWW* storyline. Although I shall discuss below how they diverge, there are some similarities in how Jones and *TWW* justify unilateral intervention. For instance, both Jones and *TWW* contextualize the need for intervention on the basis that there are victims who are in dire need of saving. In his article, Jones commences with the imagery of death, sorrow and tragedy that is taking place in the real world of Darfur, based in part on the reportage of Nicholas Kristof of the *New York Times*. *TWW* employs similar strategies by projecting the imagery of children and parents murdered, and the rape and assaults of pregnant women. Similarly, both Jones and *TWW* stress, rightfully, the primacy of human rights concerns as justification for such intervention. *TWW* however takes this further by drawing a tight connection between human rights norms and American values and principles. Intervention becomes the

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<sup>151</sup> In a subsequent season four episode, the viewership learns that five United States infantrymen are killed due to friendly-fire in Kundu during a live fire training exercise, but not because of any hostile actions taken by the Arkutu. The deaths of the servicemen are used in part to draw attention to the disproportionate amount of minorities ‘forced’ to serve in the military due to economic circumstances and arguments made about reinstating the draft so that more middle class individuals are compelled to share the burdens of such military adventures. *The West Wing: Angel Maintenance*, *supra* note 5.

<sup>152</sup> In the fourth season finale, it is merely mentioned that American troops were still stationed in Kundu. *The West Wing: Twenty-Five*, *supra* note 5.

instrumentality of an American expansionism to spread national and cultural values, which are implicitly tied to human rights norms and principles—such as the freedom of expression and the freedom to worship.

As discussed above, Jones sets forth a non-exhaustive set of criteria that he argues should be met before a unilateral intervention is to be launched. The facts of the Kundu intervention seem to satisfy or be in accordance with some of these stated criteria. For example, the fictional genocide in Kundu would qualify as a supreme humanitarian emergency given the number of individuals already killed and how many more are likely to die if the genocide continues. The emergency is heightened by the images that Josh sees on a television screen of numerous dead bodies laying on the ground. Jones argues that an intervention must comply with the norms of proportionality. *TWW*'s facts suggest that these norms are complied with, as the United States military merely takes Bitanga airport and afterwards gives Kundu's dictator thirty-six hours to vacate before United States soldiers take the capital. Similarly, the rescue operation that United States Special Forces engage in to rescue three soldiers taken hostage similarly does not suggest that there is any disproportionate conduct on their part. It appears measured and precise. If anything, the United States military forces and personnel who are attacked at the training camp are made out to be the objects of a terrorist attack.

Furthermore, *TWW* accomplishes the goal of creating the appropriate circumstances that will make a successful intervention highly probable. First, it establishes—through a force depletion report—that only an estimated 150 American soldiers' lives would be lost. There is an implication that were the operation to be deemed unsuccessful or having a lesser probability of success, the death rate might be much higher; for example, Miles Hutchison estimated 1000 lives would perish in the event of an intervention. Furthermore, as suggested above, by the end of *TWW*'s fourth season, it is presumed that the United States accomplished its military and humanitarian objectives in Kundu with a minimal loss of life to American servicemen and servicewomen. Thus, one is led to believe that there would be a high probability of success and that the Bartlet Administration was indeed successful.

Where *TWW* diverges dramatically with Jones' prescriptions is in the desirable level of involvement and amount of support from the international community and other states in the Security Council before engaging in a unilateral intervention. For instance, Jones argues that the intervening state should approach the Security Council and inform it of its intention to intervene, and if the Council fails to act, then the intervening state may take action, subject to other preconditions that Jones suggests.<sup>153</sup> However, in *TWW*, Jed's Administration does not approach the Security Council before engaging in military intervention. Generally, the U.N. is presented as a feeble institution that is strictly capable of 'debating' a proclamation denouncing the Kundu massacres in the General Assembly. Thus, even though the Assembly's proclamation about whether genocide is

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<sup>153</sup> Jones, *supra* note 71, at 115.

transpiring would have no binding effect, it is made instructive that the Assembly could not even achieve this feat without a significant debate—suggesting that a resolution specifically approving unilateral intervention might not be promising. In addition, *TWW* presents the idea that the U.N. is incapable of persuading dictators from committing crimes like genocide. Jed, in his lecture to the Kundunese ambassador after deciding to send troops to Kundu, stresses that the U.N. Secretary-General (and the Pope) “pleaded” with Kundu’s dictator to stop the genocide but struck out, thus illustrating that the Secretary-General has no actual power to influence or affect anything.

Jones also advocates that an intervening state seek approval of its unilateral humanitarian intervention from two members of the Security Council.<sup>154</sup> In *TWW*, however, Jed’s Administration does not seek this approval, for doing so is made to appear obsolete and a waste of time. What the audience learns is that one state in particular, France—a permanent member of the Security Council—is refusing to even provide the United States with access to its airspace. For its defiance, France is informally rebuked by being represented by the caricature of Jean-Paul, and more forcefully by Jed’s “loaf of bread” remark. The depiction of France’s obstinacy is meant to serve a larger purpose of presenting the unwillingness of other nations as a reason to justify an American duty to intervene.

While Jones’ advocacy for unilateral humanitarian intervention is or may seem controversial because, among other things, it advocates for the use of force without the authorization of the Security Council, it does not necessarily represent the actualization of a single intervening state’s imperialistic policy in the same way that *TWW* presents it. Under Jones’ paradigm, the imperialistic tone (attendant with the strong moral and religious nuances) so apparent in *TWW* is avoided, or at least minimized to some degree, because the intervening state must enlist other types of international support that would make a unilateral intervention—if not fully and technically legal under the U.N. Charter, at least functionally acceptable as a necessary evil in the wake of genocide. For instance, Jones proposes that prior to a unilateral intervention, a U.N. Commission of Inquiry determine whether genocide is transpiring in a given place. Furthermore, Jones suggests that unilateral intervention may be justified if charges were to be laid in the International Criminal Court against leaders in the targeted state for participation in genocide.<sup>155</sup> Also, according to Jones, if the Security Council is unable to authorize due to political paralysis, the General Assembly should approve the intervention by a majority vote. All of these propositions suggest a rather high standard to meet—one which *TWW* never comes close to matching or even trying to meet. Yet by achieving some or all of these proposed preconditions described by Jones, an intervening state could legitimately argue that it is pursuing a necessary policy of intervention that is functionally authorized by substantial portions of the international community. Moreover, by seeking agreement that genocide is transpiring, as suggested through a

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<sup>154</sup> *Id.* at 116.

<sup>155</sup> *Id.*

determination by a U.N. Commission of Inquiry or through charges laid in the International Criminal Court, an intervening state could legitimately argue that some objective evidence supports the proposed intervention.

As I indicated earlier, Jones' prescriptions for unilateral humanitarian intervention, given the level of involvement required of the international community in the determination of genocide and approval of the intervention, suggests greater multilateral international involvement than the term 'unilateral' might ordinarily imply. Thus, although a particular state may engage in an operation unilaterally, and if pursued in a manner suggested by Jones, it is arguable that the actual enforcement would be unilateral. Yet the approval or lead up to the intervention would require international or otherwise multilateral involvement, agreement, and/or endorsement. *TWW* reflects a more truly 'unilateral' approach, for it seems that there is little or no consultation or involvement with other states or international bodies. This is not to suggest that *TWW*'s method—whether characterized as being truly unilateral, or a more extreme form of 'unilateral'—is a better policy option per se than following an approach that involves greater international agreement and support.

Ultimately, *TWW*'s presentation of unilateral humanitarian intervention is a more extreme and radical departure from what has been presented in certain academic and policy circles that advocate for humanitarian intervention. It may of course be unfair to expect that a television series, whose principal task is to entertain, should craft a storyline in a prescribed manner as set out in an academic and/or policy text. Yet, while seeking to entertain, *TWW* also advocates certain types of political and legal agendas over others. That the law and policies presented are transmitted through a form of entertainment does not allow it to escape serious criticism. *TWW* arguably bears a greater power to transmit these particular normative ideas into the public domain and do so much more broadly than many academic and policy texts ever will. *TWW* was not just any television program. It transmitted messages about the ideal role of government, and the unilateral intervention was a mere example of this perceived ideal role.

#### IV. ALTERNATIVE VISIONS

*TWW*'s storylines are drawn from contemporary political and legal realities. It then processes those realities and re-imagines different and more idealized outcomes than those that transpired in the real world. For example, in the genocide in Kundu, the Bartlet Administration engages in a policy of intervention that the Clinton Administration did not come close to doing in Rwanda—either individually or through the auspices of the U.N. It provides the moral justification to pursue this path by basing an intervention on American values and by relying upon reified imagery of savages, victims, and saviors. Furthermore, *TWW* creates a sense of agency in the ability of the executive branch to make fruitful changes both domestically and abroad; to act as the ultimate instrument of good. This agency, however, largely excludes members of the victim class from

exercising any form of resistance to their oppressors. It is the Bartlet Administration that must do the lion's share of the rescuing.

The Kundunese storyline, given its resemblance to the Rwandan genocide, may have been engineered to prime an American viewing public to consider a different approach to responding to such humanitarian disasters should another one emerge. As with the fictional Kundu, the Rwandan genocide took place in an African country that was otherwise hitherto unknown and/or relatively unheard of by many until the outbreak of the genocide.<sup>156</sup> The genocide was perpetrated by a majority ethnic group, the Hutus against the minority Tutsi community and involved significant use of rape, machetes, and other weapons. As in Rwanda, the Kundunese storyline incorporated the use of radio transmissions to incite members of the majority community to rid the country of its minority.<sup>157</sup> Thus, it is fair to suggest that although fictional, the Kundunese genocide invoked in the viewing public's imagination references and memories of events associated with the Rwandan genocide. However, the forces that ultimately put an end to the Rwandan genocide are strikingly different from those presented in *TWW*. In Rwanda, the Clinton Administration did not send any military force to stop the genocide, even though it was apparently aware of the scale of the atrocities.<sup>158</sup> The U.N. sent a peacekeeping force headed by the Canadian Lt. General (now Senator) Roméo Dallaire that was unfortunately unable to provide more effective assistance to the Tutsis due to lack of personnel and lack of clear authority to engage with the Hutu military forces.<sup>159</sup> Furthermore, unlike the Americans, the French sent a small peacekeeping force to Rwanda, albeit closer to the end of the genocide.<sup>160</sup> Lastly, it was the RPF, comprised of Tutsis and moderate Hutus, (i.e. local resistance), that ultimately halted the genocide and overtook the then Hutu-led government. Undoubtedly, it cannot be forgotten that in Rwanda, millions of people lost their lives in gruesome ways over several months in 1994, as local resistance and U.N. forces failed to stop the genocide sooner. Yet, contrary to *TWW*'s representation of the situation in Kundu, some international efforts—but mostly local resistance—played a major role in eventually stopping the genocide and further extermination of the Tutsis.

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<sup>156</sup> When Lt. Gen. Roméo Dallaire heard the news that he was going to head a U.N. peacekeeping mission in Rwanda, he asked, "Rwanda, that's somewhere in Africa, isn't it?" DALLAIRE, *supra* note 92, at 42.

<sup>157</sup> Nahimana v. The Prosecutor, Case No. ICTR-99-52-A, Judgment (Nov. 28, 2007).

<sup>158</sup> Rory Carroll, *US chose to ignore Rwandan genocide: Classified papers show Clinton was aware of 'final solution' to eliminate Tutsis*, THE GUARDIAN, Mar. 31, 2004, available at <http://www.guardian.co.uk/world/2004/mar/31/usa.rwanda> (last visited Oct. 18, 2009).

<sup>159</sup> See DALLAIRE, *supra* note 92, at 514 (questioning and subsequently answering: "Could we have prevented the resumption of the civil war and the genocide? The short answer is yes. If [the United Nations Assistance Mission for Rwanda] had received the modest increase of troops and capabilities we requested in the first week, could we have stopped the killings? Yes, absolutely. Would we have risked more UN casualties? Yes, but surely soldiers and peacekeeping nations should be prepared to pay the price of safeguarding human life and human rights.")

<sup>160</sup> Although it should be noted the French have largely been associated with arming the government of Rwanda which later used those same weapons to perpetrate the genocide. See DALLAIRE, *supra* note 92, at 62.

Although *TWW* emphasizes the role of the United States government in stopping genocide, resistance by Kundunese civil society is however given some positive but minimal exposure. During one of the many Inauguration Day events he must attend, Jed informs his staff: “[y]ou know it’s easy to watch the news and think of Kundunese as either hapless victims or crazed butchers. And it turns out that’s not true. I got this intelligence summary this afternoon: “Mothers are standing in front of tanks.” And we’re gonna go get their backs.”<sup>161</sup> Clearly, this one reference recognizes the ability of individuals within a victim class to resist. Yet ironically, throughout much of the story, *TWW* largely portrayed the Kundunese very much as hapless victims or crazed butchers. All said and done, the overwhelming emphasis still remained on the role of the United States military forces in the intervention to go and “get their backs.” The viewer is left with no doubt that while the imagery of African mothers engaged in a *tête-à-tête* with tanks signifies boldness and bravery, yet they will hardly be successful in stopping the genocide without United States military intervention.

The Bartlet Administration’s intervention may strike a resonant chord with many *TWW* liberal viewers who believe that the United States should play a more active role in humanitarian crises taking place such as in Darfur. This is particularly so as it presents American military might at its noblest, saving thousands of people from tremendous suffering, rather than invading a state, based on faulty intelligence with the ostensible aim of eliminating weapons of mass destruction. Yet *TWW*’s trope of American savior-hood and its presentation of unilateral humanitarian intervention miss an opportunity to explore something important—the role of local resistance in combating or serving as a source of opposition to perpetrators of genocide. This lacuna resembles many of the academic and policy arguments in support of humanitarian intervention that neglect the role of local fighters. For instance, during World War II, while Allied forces took several years to finally defeat Hitler’s armies, it was the efforts of various local resisters in Europe who helped to keep Jews, and other targeted communities alive during the war. This included armed resistance by Jewish partisans, as well as assistance to European Jews by non-Jewish persons who resisted Nazi attempts at extermination by hiding Jewish families and/or children. Certainly, these efforts were not sufficient to resist the Nazis’ efforts at extermination, yet without them many of those who escaped extermination would likely have met a different fate had they just waited for the Allies to rescue them. *TWW* further fails to recognize certain realities surrounding interventions: they often arrive late—mobilizing a large force takes time.<sup>162</sup> In contrast, local resistance may be able to respond quicker in some cases, particularly while help is supposedly or possibly on the way.<sup>163</sup> Ultimately, the expectation that foreign intervention will arrive and save lives can lull a targeted group into not taking sufficient steps to properly defend itself.

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<sup>161</sup> *The West Wing: Inauguration: Over There*, *supra* note 1.

<sup>162</sup> See Kuperman, *supra* note 88.

<sup>163</sup> An example of local resistance is the resistance campaign organized by Bielski brothers against the Nazis. See Nechama Tec, *Jewish Resistance in Belorussian Forests: Fighting and the Rescue of Jews by Jews*, in *RESISTING THE HOLOCAUST* (1998), *supra* note 17, at 77-94.

*TWW*'s construction of an American R2P also places upon the United States the unrealistic burden of absorbing the economic and human costs of engaging in such rescues. Given the educative and persuasive function that television plays, intended or not, it is unfortunate indeed that *TWW* tends to reinforce in the viewer's mind the idea that there are only two viable options to opposing genocide—complete inaction or unilateral intervention. This thus perpetuates an already impoverished public discourse on the issue and consequently burdens the United States with an unrealistic expectation of being the savior, and emboldens it to engage in potentially ill-advised military adventures that may cause unexpected damage or worsen local conditions in other states. Viewers are not offered other, more nuanced, options to consider. They are not given other alternatives, namely that a collaborative approach with other states and the U.N. could entail sharing the costs and risks of a peace-enforcement mission. It also undermines the collaborative roles that international actors play or can play in dealing with international crises, particularly if they have an adequate mandate to do so. Thus a narrative that highlights the United States leading or significantly contributing to international efforts, and/or supporting an effective local resistance financially and/or through the supply of weapons could garner greater support, amongst a viewing public.<sup>164</sup>

For instance, in contrast to the inaction of the Clinton Administration in Rwanda, the Bartlet Administration might have fully supported a U.N. peacekeeping force or peace-enforcement mission and lent its weight by persuading other Security Council members to agree. Furthermore, the Bartlet Administration could have demonstrated such willingness by providing an American peacekeeping force with enough personnel and materiel, in addition to more importantly arguing for a larger mandate to take sufficient measures to stop the genocide. As Lt. General Dallaire has opined, such measures might have been sufficient to stop the Rwandan genocide.<sup>165</sup> In such a proposed scenario, the United States could even have taken a prime role in leading a peace-enforcement mission in consultation with other allies, thus fulfilling *TWW*'s need and its viewers' expectation of the United States playing a significant role in extending human rights around the world.

Another perhaps more interesting and far-reaching alternative could have been to write into the storyline, efforts by local resistance committed to restoring peace and stopping a campaign of genocide. This might have gone beyond just incorporating the metaphor of mothers standing in front of tanks. This local resistance could have included the creation of an armed resistance comprised of local Induye and perhaps moderate Arkutu, in a manner similar to the RPF. However, unlike the more pristine conduct of

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<sup>164</sup> Interestingly, Aaron Sorkin wrote the screenplay for the film, *CHARLIE WILSON'S WAR* which depicts the real life efforts of a Democratic Congressman to fund the local resistance against the Soviet invasion in Afghanistan during the 1980s. After providing the Afghans with sufficient weapons and other support, the Soviet Union decided to finally leave after several years. The film also points out the folly of failing to provide financial assistance to the country after the departure of the Soviet Union to help in its reconstruction and the development of local infrastructure and economy. *CHARLIE WILSON'S WAR* (Universal Studios Canada 2008).

<sup>165</sup> DALLAIRE, *supra* note 92, at 514.

American military forces in *TWW* (both in Kundu and in other *TWW* plotlines), or the simplistic allegories of savages and victims that were depicted, such resistance forces should not be represented as wholly perfect and conducted by morally unblemished individuals. In other words, a realistic illustration of counter-genocide resistance would, as in the real world, tell of certain excesses, imperfections, and realities about the nature of armed conflict. Furthermore, individuals who sometimes engage in extreme conduct in self-defense do not make them altogether unworthy of assistance. Support for local resistance efforts is by no means unproblematic, but *TWW* might have considered ways to explore such complexities. Another avenue of exploration might have been the combination of local armed resistance paired with sufficiently mandated and well-supplied multilateral troop deployments sent to Kundu to stop the genocide. As in many historical examples, it is the tandem of local resistance efforts and outside intervention (whether acting in concert together or otherwise) which can help to save people; whereas efforts that rely upon just one or the other may risk losing many more lives.

In addition to exploring ways to respond to genocide once it has commenced, other discussions are afoot to explore ways to prevent genocide in the first place. Thus rather than a reactive series of measures, *TWW* might have contemplated the construction of a visionary mechanism aimed at monitoring potential trouble spots, and taking pre-emptive action to stop a genocide before it even begins to take shape and have time to build momentum. This could entail more reliable information-gathering mechanisms designed to ensure that the President and governments are provided with more than just “sketchy” information about what is taking place in more “remote” places, so they can mobilize necessary resources to deal with issues before a crisis erupts, and avoid expending greater resources in the process.

## V. CONCLUSION

*TWW*'s Kundunese genocide plotline injects certain norms into the stream of public consciousness, namely, that the United States bears an obligation as well as the authority to intervene, absent U.N. Security Council authorization, in cases of genocide wherever they take place, due to the inability and unwillingness of international actors and/or other national state actors. This obligation is predicated on the notion that governments should act in an assertive manner as an instrument of good to effect positive change both at home and abroad. The obligation is also based on the principle that the United States government should play the role of a savior in order to assist those who are being victimized. Furthermore, *TWW*'s Kundunese storyline neglects the role that resistance by local civil societies can play in challenging such extreme oppression. When one considers the reality that local resistance and/or international actions have had more impact in stopping genocide or saving lives from genocidal murder, than have unilateral state actions, *TWW* could have constructed a narrative emphasizing American leadership and cooperation

with other international state actors to confront such problems. Moreover, *TWW* may have promoted greater awareness amongst the viewing audience of the potential agency of local resistance by having the Bartlet Administration support and/or coordinate with such local resistance. When one considers the unlikelihood of unilateral American intervention, in light of its currently stretched resources, and the prohibitive costs associated with such interventions, particularly when considering America's sizable and ever-growing national debt that has accumulated since the U.S. invasions and occupations in Afghanistan in 2001 and Iraq in 2003, envisaging and exploring the possibilities of a more realistic role for the United States would likely do more good to combat genocide in the real world.

One cannot forget the immense impact that artistic works can have in influencing future thought and action. Following the Armenian genocide perpetrated by the Ottoman Empire during the first World War, Hanz Werfel wrote *Forty Days at Musa Dagh*, a fictional story dramatizing an example of Armenian resistance to Turkish efforts at exterminating the Armenian population in its midst. Werfel's book was published in 1933, and translated the following year into Hebrew, later becoming a source of inspiration for many Jewish youth in Europe who resisted the Nazis.<sup>166</sup> When we consider the ability of television and film to transmit messages and ideas, without requiring the audience to be literate, it has the capacity to reach a greater amount of people than books. As it has become evident, genocide and humanitarian crises present recurring and ongoing challenges. The subject of the Kundunese genocide may still continue to resonate with viewers, yet unlike the positive influence that Werfel's text had on Jewish youth in the 1930s and 1940s, what impact will the "Bartlet Doctrine" of unilaterally mobilizing United States military forces where only humanitarian interests are involved, have in future years? Only time will tell. However unlike Werfel, *TWW*'s writers do not inspire individuals to resist those who oppress them, instead, their message is "hold tight, the cavalry is coming."

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<sup>166</sup> See Auron, *supra* note 22.

