

Responsibility and the Harm of Mass Sexual Slavery

By

Shannon Fyfe

Dissertation

Submitted to the Faculty of the

Graduate School of Vanderbilt University

in partial fulfillment of the requirements

for the degree of

DOCTOR OF PHILOSOPHY

in

Philosophy

August 10, 2018

Nashville, TN

Approved:

Larry May, Ph.D., J.D.

Jeffrey Tlumak, Ph.D.

Marilyn Friedman, Ph.D.

John Weymark, Ph.D.

Jens David Ohlin, Ph.D., J.D.

TABLE OF CONTENTS

	Page
INTRODUCTION	1
SECTION 1.1 – THE ISLAMIC STATE	2
SECTION 1.2 – AUGUST 2014 ATTACK ON THE YAZIDIS	6
SECTION 1.3 – THE CHALLENGE OF THE YAZIDI WOMEN AND GIRLS	8
CHAPTER II – VIOLENCE AND SOCIAL GROUPS	17
SECTION 2.1 – KINDS OF SOCIAL GROUPS	17
SECTION 2.2 – COLLECTIVISM	19
SUBSECTION 2.2.A – INTENTION	22
SUBSECTION 2.2.B – OBJECTIONS	25
SECTION 2.3 – INDIVIDUALISM	26
SUBSECTION 2.3.A – GROUP IDENTIFICATION	29
SUBSECTION 2.3.B – OBJECTIONS	31
SECTION 2.4 – HYBRIDISM	32
SECTION 2.5 – HYBRIDISM AND NONVOLUNTARY GROUP MEMBERSHIP	37
SECTION 2.6 – IS PERPETRATORS AND VICTIMS	38
SUBSECTION 2.6.A – PERPETRATORS	39
SUBSECTION 2.6.B – VICTIMS	41
CHAPTER III – THE HARM OF SEXUAL SLAVERY	44
SECTION 3.1 – PREVENTING SEXUAL VIOLENCE IN WAR	45
SUBSECTION 3.1.A – GROTIUS AND IDENTIFYING HARM	46
SUBSECTION 3.1.B – GROTIUS AND PREVENTING HARM	49
SECTION 3.2 – AN ACCOUNT OF HARM	52
SUBSECTION 3.2.A – HARM AND WRONGDOING	52
SUBSECTION 3.2.B – HARM AND INTERESTS	54
SUBSECTION 3.2.C – HARM AND WELL-BEING	56
SUBSECTION 3.2.D – GROUP-BASED HARMS	60
SECTION 3.3 – HARM OF SEXUAL SLAVERY	62
SUBSECTION 3.3.A – SEXUAL SLAVERY OF INDIVIDUALS	63
SUBSECTION 3.3.B – MASS SEXUAL SLAVERY	65
SECTION 3.4 – WRONG OF SEXUAL SLAVERY	67
SUBSECTION 3.4.A – ACTION	68
SUBSECTION 3.4.B – MANNER	68
SUBSECTION 3.4.C – MORAL INDEFENSIBILITY	69
SUBSECTION 3.4.D – RIGHTS VIOLATION	72

CHAPTER IV – TERRORIST GROUP STATEHOOD	74
SECTION 4.1 – STATEHOOD AND SOVEREIGNTY	75
SUBSECTION 4.1.A – AUTHORITY	76
SUBSECTION 4.1.B – RECOGNITION	78
SUBSECTION 4.1.C – STATEHOOD	79
SECTION 4.2 – STATEHOOD AND ISLAM	85
SECTION 4.3 – STATEHOOD AND INTERNATIONAL LAW	90
SUBSECTION 4.3.A – LEGAL THEORIES OF STATEHOOD	90
SUBSECTION 4.3.B – IS STATEHOOD UNDER INTERNATIONAL LAW	94
SECTION 4.4 – RELATIONAL STATE/NON-STATEHOOD	97
SUBSECTION 4.4.A – RELATIONSHIP TO INDIVIDUALS	98
SUBSECTION 4.4.B – RELATIONSHIP TO OTHER POLITICAL ACTORS	100
SUBSECTION 4.4.C – IS AND ITS SHIFTING POWER	101
CHAPTER V – RESPONSIBILITY FOR SEXUAL SLAVERY	104
SECTION 5.1 – MORAL RESPONSIBILITY	105
SECTION 5.2 – CASE STUDY: NADIA MURAD	111
SECTION 5.3 – INDIVIDUAL RESPONSIBILITY	113
SECTION 5.4 – COLLECTIVE RESPONSIBILITY FOR GROUP ACTS	118
SECTION 5.5 – SHARED RESPONSIBILITY FOR GROUP ACTS	123
SUBSECTION 5.5.A – AN ACCOUNT OF SHARED RESPONSIBILITY	124
SUBSECTION 5.5.B – FAILURE TO PREVENT HARM TO YAZIDI WOMEN AND GIRLS	130
CONCLUSION	137
REFERENCES	141

INTRODUCTION

On August 3, 2014, fighters from the Islamic State of Iraq and al-Sham (ISIS, ISIL, IS, or Da'esh) invaded the Sinjar region of northern Iraq and attacked its inhabitants, the Yazidi people. In the days that followed, IS fighters began selling women and girls, some as young as nine, at market to be held in sexual slavery. Several thousand women and girls remain in captivity to this day. My aim in this dissertation is to explore philosophical questions motivated by the sexual violence directed at the Yazidi people, by analyzing the underlying metaphysical, ethical, political, and legal concepts that will allow me to identify the responsibilities of the global community with respect to crises like the one facing the Yazidi women and girls.

While the dissertation is motivated by a specific case of violence, I intend to use my analysis of the case and the related concepts to draw out conclusions beyond the circumstances of the Yazidis. Due to the wide range of disciplines that have sought to answer questions about how to address mass sexual slavery, including political, sociological, religious, feminist, activist, legal, and pragmatic responses, some have relied on assumptions about how we should view particular parts of the issue. I aim to break the issue down to the foundational questions about harm and group identity before making claims about how the international community should understand and address instances of mass sexual slavery. In this first chapter, I set up the case of the sexual slavery of Yazidi women and girls by IS fighters and introduce how I will use this case as an illustration and to motivate the questions explored in subsequent chapters. In doing so, I begin by exploring the foundations of the group of individuals known as IS. I then turn to the attack on and ongoing violence against the Yazidi people in particular.

1.1 The Islamic State

One terrorist group was responsible for over half of all claimed global fatalities due to terrorism in 2014: IS.¹ The earliest iteration of IS was founded in 1999, emerging out of intense turmoil and unrest in the Middle East. The group has since grown into a large, hierarchical organization focused on governing as an Islamic State, or caliphate, across the borders of nation states. IS is a Salafi-jihadist group, with stated purposes of achieving salvation through military triumph and domination over the enemies of Islam. In June 2014, IS declared an Islamic State over large areas of Iraq and Syria. Today, IS claims religious and political authority over all Muslims in the world, and maintains (violent) territorial control over areas in Syria, Iraq, Afghanistan, Libya, and Sinai. Additionally, in 2015 and 2016, IS claimed responsibility for high-profile terrorist attacks in Turkey, France, Tunisia, Yemen, Brussels, and on Metrojet Flight 9268 from Egypt to Russia. As with many terrorist groups, the individual members may have a wide variety of reasons for having joined the group. Many joined as Salafi-jihadists. But others were forced or coerced into joining, either as children or captives or through the pressures of economic necessity.

The purported goals of IS have a loose relationship with mainstream interpretations of Islam. Historically, the divine law of Islam states that its own conception of justice is the only correct version of justice. This results in a “universalist aspiration” for the faith, a goal of peace through the establishment of the correct religious doctrine all over the world.² It is the collective duty of all Muslims to establish peace and justice, through Islam, all over the world.

¹ “2015 Global Terrorism Index: Deaths from Terrorism Increased 80% Last Year to the Highest Level Ever; Global Economic Cost of Terrorism Reached All-Time High at US\$52.9 Billion,” *PR Newswire*, November 16, 2015. Boko Haram and IS were jointly responsible for 51% of all claimed global fatalities, but Boko Haram has pledged allegiance to IS.

² Christopher A Ford, “Siyar-Ization and Its Discontents: International Law and Islam's Constitutional Crisis,” *Texas International Law Journal* 30 (1995): 500.

The Arabic word *jihad* means “to exert oneself” or in the context of Islam, “exertion of one’s power in Allah’s path, that is, the spread of the belief in Allah and in making His word supreme over this world.”³ The Quran states that the duty of Muslims is to “strive for Allah with the striving due to Him,”⁴ and “believe in Allah and His Messenger and strive in the cause of Allah with your wealth and your lives.”⁵ The term *jihad* does not necessarily refer to war, because “exertion of one’s power in Allah’s path” could be achieved either peacefully or violently.⁶ The Quran calls Muslims to “declare what you are commanded and turn away from the polytheists”⁷ and to “[f]ight them until there is no [more] *fitnah*⁸ and [until] worship is [acknowledged to be] for Allah. But if they cease, then there is to be no aggression except against the oppressors.”⁹ The struggle to expand the influence of Islam was meant “to establish peace with justice within a secure political order,”¹⁰ but the peaceful and secure political order might only be established through war.

There is an important distinction to be made between personal *jihad* and political *jihad*. The former, *al-jihad al-akbar*, refers to a personal moral struggle and is considered to be the “greater” *jihad*.¹¹ Political *jihad*, or *al-jihad al-a ghar*, refers to an armed struggle of

³ Richard C. Martin, “The Religious Foundations of War, Peace, and Statecraft in Islam,” in *Just War and Jihad: Historical and Theoretical Perspectives on War and Peace in Western and Islamic Traditions*, eds. John Kelsay and James Turner Johnson (Westport, CT: Greenwood Press, 1991), 96-97.

⁴ Quran 22:78. All quotes from the Quran are from the Sahih International American Translation.

⁵ Quran 61:11.

⁶ Majid Khadduri, *War and Peace in the Law of Islam* (Clark, N.J.: The Lawbook Exchange, 2006), 55; *The Islamic Conception of Justice* (Baltimore: Johns Hopkins University Press, 1984), 164.

⁷ Quran 15:94.

⁸ Meaning “disruption of society.” See M. Cherif Bassiouni, *The Sharī‘a and Islamic Criminal Justice in Time of War and Peace* (New York: Cambridge University Press, 2014), 218.

⁹ Quran 2:193.

¹⁰ John Kelsay, *Islam and War: A Study in Comparative Ethics* (Louisville, KY: Westminster/John Knox Press, 1993), 34.

¹¹ Ahmed Al-Dawoody, *The Islamic Law of War: Justifications and Regulations* (New York, NY: Palgrave Macmillan, 2011), 76.

the state and is known as the “lesser” *jihad*.¹² Political *jihad* can be either domestic or international. Domestic *jihad* is fought against one or more of the following groups: (1) rebels or secessionists, (2) bandits, highway robbers, or pirates, (3) apostates, and (4) violent religious fanatics.¹³ International *jihad* is fought against non-Muslim states. The terms *jihad al-kuffar* (jihad against unbelievers) and *jihad fi sabil Allah* (jihad in the path of God) are often used to refer to international *jihad*.¹⁴ But because Muslims were historically or theoretically united under one state, “any *jihad* that occurred between the Islamic state and its enemies was a war between Muslims and their enemies,” and this means that not every conflict was motivated by lack of Muslim faith.¹⁵ Finally, there is a distinction between *jihad al-daf*, or defensive war, and *jihad al-talab*, which is aggressive war initiated by Muslims outside the Islamic State.¹⁶

There is disagreement among scholars as to whether the duty of *jihad* is collective or individual. Al-Mawardi argued that the duty to initiate jihad is collective, while the duty becomes individual after hostilities have begun.¹⁷ This seems plausible in light of the various types of *jihad*: an individual may have a duty to participate in *al-jihad al-a ghar* (lesser, political jihad), but as part of what he understands to be his individual duty of *al-jihad al-akbar* (greater, personal jihad). So the duty of an individual with respect to *jihad* could be seen to implicate the collective, political *jihad*, but might only directly involve the “religious

¹² Ibid.

¹³ Ibid., 77.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Asma Afsaruddin, “The Siyar Laws of Aggression: Juridical Re-Interpretations of Qur’ānic Jihād and Their Contemporary Implications for International Law,” in *Islam and International Law: Engaging Self-Centrism from a Plurality of Perspectives*, eds. Marie-Luisa Frick and Andreas Th Müller (Leiden: Martinus Nijhoff Publishers, 2013).

and legal duty” which can be fulfilled “by the heart and tongue in combatting evil and spreading the word of God.”¹⁸

As a collective duty, however, *jihad* falls on the state. Each believer is bound to fulfill his duty by “the hand and sword in the sense of participation in fighting.”¹⁹ If such a “duty is fulfilled by a part of the community it ceases to be obligatory on others; the whole community, however, falls into error if the duty is not performed at all.”²⁰ Khadduri argues that this collective understanding of the duty of *jihad* results in two main benefits:

In the first place, it meant that the duty need not necessarily be fulfilled by all the believers. For the recruitment of all the believers as warriors was neither possible nor advisable. Some of the believers were needed to prepare food and weapons, while the crippled, blind, and sick would not qualify as fighters. Women and children were as a rule excused from actual fighting, although many a woman contributed indirectly to the war effort. In the second place, the imposition of the obligation on the community rather than on the individual made possible the employment of the *jihad* as a community and, consequently, a state instrument; its control accordingly, is a state, not an individual, responsibility. Thus the head of the state can in a more effective way serve the common interest of the community than if the matter is left entirely to the discretion of the individual believer.²¹

So as a state doctrine, used to legitimate conquest, pre-emptive self-defense, and the use of force to promote political legitimacy,²² a decision to participate in *jihad* could only be made effectively through an Islamic state.

The first set of questions that arises for this project relates to the ontological status of the group IS. Namely, what it is to be a group or an individual member of a group, which I will explore in Chapter Two. The religious underpinnings of Islam and whether the obligations of *jihad* are individual or collective will play a significant role in the application of this

¹⁸ Khadduri, *The Islamic Conception of Justice*, 164-65.

¹⁹ *Ibid.*, 165.

²⁰ *War and Peace in the Law of Islam*, 60.

²¹ *Ibid.*, 61.

²² M. Cherif Bassiouni, “Evolving Approaches to Jihad: From Self-Defense to Revolutionary and Regime-Change Political Violence,” *Journal of Islamic Law and Culture* 10, no. 1 (2008): 62.

understanding of groups to IS. I will then explore what sort of entity a terrorist group is in Chapter Four. We can see that the statehood of IS matters a great deal in terms of both the political and religious obligations of the group. The plausibility and relevance of the purported religious justifications for violence will be explored in Chapter Three and Chapter Five, when I explore harm and moral responsibility.

1.2 August 2014 Attack on the Yazidis

People of the Yazidi faith community have experienced widespread discrimination and persecution for hundreds of years. A Yazidi person must have two Yazidi parents, so one cannot convert to the religion, and thus marriage outside the community has been rare. The insular nature of the Yazidi community has allowed pervasive misunderstandings about the substance of the Yazidi faith to spread throughout the Arab world.²³ Despite the limited interactions between their communities, many Yazidis and Sunni Muslims who lived in the Sinjar region had enjoyed friendly relations for years.²⁴

When IS fighters attacked Sinjar from Iraq and Syria, they surrounded the community on all sides of Mount Sinjar.²⁵ IS faced little resistance and was able to trap tens of thousands of Yazidis on the upper plateau of Mount Sinjar, while also capturing thousands of Yazidis who tried to flee.²⁶ IS fighters immediately separated the adult males from the female and child captives and then began forcibly transferring their Yazidi captives into IS-controlled areas of Iraq, and eventually Syria as well.²⁷ The Yazidi community was subjected to “almost unimaginable atrocities,” including reports “of men being killed or forced to convert; of

²³ U.N. Human Rights Council, “*They came to destroy*”: *ISIS Crimes Against the Yazidis*, U.N. Doc. A/HRC/32/CRP.2, 15 June 2016, 6, para. 19.

²⁴ *Ibid.*, 6, para. 20.

²⁵ *Ibid.*, 6, para. 23.

²⁶ *Ibid.*, 7, paras. 25-29.

²⁷ *Ibid.*, 8-10, paras. 31, 42.

women and girls, some as young as nine, sold at market and held in sexual slavery by IS fighters; and of boys ripped from their families and forced into IS training camps.”²⁸

At least one group of older Yazidi women were executed shortly after the transfer of the women and children to the holding sites.²⁹ Many women and girls committed or attempted to commit suicide.³⁰ The remaining captured women and girls were considered the property of IS. Most were made available to IS fighters for individual purchase, and a small number were held as the “collective property of ISIS” and “distributed in groups to military bases throughout Iraq and Syria.”³¹ Once a Yazidi woman or girl had been sold to an individual IS fighter, she was subjected to brutal sexual violence and beatings. When women or girls tried to escape, they were punished with gang rape and/or the murder of their children.³² Many Yazidi women and girls report that they were forced to take birth control by the IS fighters, while others became pregnant as a result of being raped on a regular basis.³³ As of June 2016, the U.N. Human Rights Council estimates that at least 3,200 Yazidi women and girls remain captives of IS. The U.N. Security Council has concluded that

by its violent extremist ideology, its terrorist acts, its continued gross systematic and widespread attacks directed against civilians, abuses of human rights and violations of international humanitarian law, including those driven on religious or ethnic ground, its eradication of cultural heritage and trafficking of cultural property, but also its control over significant parts and natural resources across Iraq and Syria and its recruitment and training of foreign terrorist fighters whose threat affects all regions and Member States, even those far from conflict zones, [IS] constitutes a global and unprecedented threat to international peace and security.³⁴

²⁸ Ibid., 3, para. 2.

²⁹ Ibid., 11, para. 48.

³⁰ Ibid., 12, para. 53.

³¹ Ibid., 12, para. 55.

³² Ibid., 14, paras. 67-68.

³³ Ibid., 15, paras. 69-70.

³⁴ U.N. Security Council, Res. 2249 [on Terrorist Attacks Perpetrated by ISIL Also Known as Da'esh], U.N. Doc. S/RES/2249, 20 November 2015.

Due to the overwhelming evidence of these acts, including the sexual slavery of thousands of Yazidi women and girls, the U.N. and many states have determined that an ongoing genocide has occurred against the Yazidi people. But the international community has yet to stop the ongoing violence and hold IS accountable for their actions.

The second set of questions arises from focusing on the Yazidi victims of IS. I will begin by assessing the ontological status of the group of Yazidi women and girls who have been held as sexual slaves by IS, again in light of what it is to be a group or an individual member of a group, and what sort of entity a group of victims is. I then turn to questions of harm, eventually narrowing in on the nature of the particular harm of sexual slavery. In the later chapters I ask about the responsibility of the international community, states, and IS with respect to addressing the ongoing harm and accounting for the past harms. We do not have a clear understanding of how to stop these atrocities, in terms of who is responsible for intervening and how. Based on my account of the nature of the harm and the ontological status of the individuals and groups involved, I will argue for a particular understanding of moral responsibility with respect to mass sexual slavery.

1.3 The Challenge of the Yazidi Women and Girls

In each chapter that follows, I address the various ways in which the sexual slavery of the Yazidi women and girls seems to present a challenge for the way we understand groups, harm, political entities, and responsibility.

As noted above, in Chapter Two I begin by tackling the issues raised by the perpetrator group, IS, and the victim group, Yazidi women and girls. We can think of what it means to be a group or a member of a group along a spectrum between individualist and collectivist accounts. An individualist sees groups as reducible to their individual members, so that any

decisions made or actions taken are done so by individuals as individuals. Collectivism, on the other hand, sees groups as their own separate entities, above and beyond the individual members of the group. The ontological statuses of individuals are, in a sense, subsumed by the group entity. I adopt a view somewhere between individualism and collectivism, with respect to both perpetrator and victim groups, and as informed by the challenges presented by the case of the sexual slavery of Yazidi women and girls.

My first task in the second chapter is to classify the organization known as IS. Here, we have a group that purports to act in accordance with one ideology, and as part of what the organization claims to be its religious duty of *jihād*. IS has been variously classified as a state, terrorist group, religious group, and a loose collective of individual fighters. The moral, legal, and political responsibilities of IS differ between these classifications, and IS seems to capitalize on this ambiguity in order to avoid any responsibilities altogether.

The next issue arises when we consider that whichever classification we use for IS, the group consists of individuals who are participants in the organization's activities. A perpetrator group like IS begins with a shared ideology and shared interests, and likely personal relationships between members of the initial group members. Members gradually join the group for a variety of reasons. Those who join for ideological or goal-based reasons quickly become full-fledged agents of the group as they build individual relationships with the other group members. Individuals who become members of the group through coercion or force will likely build relationships first in order to survive, but may become committed to the group beliefs due to time, proximity, and personal relationships. Each member of the group retains some level of moral agency, but this will vary with respect to the position within the group hierarchy. IS presents challenges with respect to how we should classify in-group

violence, perpetrated on group “members” through economic, religious, or social coercion, and how this might change or negate one’s membership in the perpetrator group. Considering what it means to be an individual member of IS allows me to rule out a purely collectivist view of groups, since individual agency within a group varies widely. But the group ideology and organizational hierarchy limit my view from dissolving into a reductionist individualism.

With respect to the Yazidi women and girls, the identity of the group and its members is a more central question than group or individual agency. Virtually no one chooses to be part of a targeted group for the reason that it will make them an individual victim. The group identity of victim groups (race, gender, religion, or some combination) usually exists prior to the group becoming a victim group, as it does with the Yazidi women and girls. The Yazidis have been targeted by IS for destruction due to religious practices it sees as “devil worship.” So all of the Yazidi women and girls have the shared experience of being targeted based on their ethnic/religious identity and their sex. The main issue, then, is how to understand what it means to be a member of a group being harmed as part of a campaign of mass violence. Some part of the individuals’ experiences as part of the victim group will be shared or similar, such as the specific harms perpetrated. Yet other parts of victim experiences will be unique, given their individual circumstances of enslavement and their phenomenological experiences of the violence. Again, this leads me to a view of groups that recognizes both the shared and individual identities of group members, so that the group is something more than the aggregate of the individuals, but not uniform.

The next chapter focuses on how we should understand the specific harm of mass sexual slavery, perpetrated against a particular group of women and girls. Killing in defense of one’s own life or the life of another is usually considered a just cause for killing, and so too

is killing in war in defense of one's own people or another group of people. The genocidal murder of the Yazidi people would almost certainly be considered a just cause for humanitarian intervention by the international community. But the ongoing threat facing the Yazidi people is mass sexual slavery, and I need a conception of harm that can help establish whether or not it alone could serve as a just cause for humanitarian intervention.

One reason why we might see mass sexual slavery as the kind of harm that could serve as just cause for humanitarian intervention, or one that would permit killing to prevent the harm, is an injury to honor. We can think about honor as “virtuous behavior, good moral character, integrity, and altruism,”³⁵ a view that is fairly consistent across cultures. In some communities, honor has a second meaning that has to do with “status, precedence, and reputation,”³⁶ and is “based on a person's (usually a man's) strength and power to enforce his will on others or to command deferential treatment.”³⁷ So an injury to honor could be to the individuals who have been directly harmed, or to the other (i.e. male) members of the community, or both. I argue that this is the wrong place to locate the harm, because I do not believe that honor is what is necessarily harmed in the act of sexual slavery. I want to find a way to locate the harm in the individuals who have been directly harmed, as individuals and collectively, and perhaps in their larger social group. But I want the harm to be based on injury to well-being, rather than honor, yet I do not want the harm to rely on the subjective experience of any of the victims. The wrongness of rape should exist apart from the experience of the victim. Instead, I need to be able to locate the wrongness of sexual slavery within an objective view of well-being. This means that I argue for a sharp distinction

³⁵ Joseph O. Vandello and Dov Cohen, “Male Honor and Female Fidelity: Implicit Cultural Scripts That Perpetuate Domestic Violence,” *Journal of Personality and Social Psychology* 84, no. 5 (2003): 997.

³⁶ *Ibid.*, 998.

³⁷ *Ibid.*; see also Richard E. Nisbett and Dov Cohen, *Culture of Honor: The Psychology of Violence in the South* (Boulder, CO: Westview Press, 1996).

between harm and wrong, as the subjective harm experienced by any individual will not generate what is wrong about the act.

The difference between genocide and the acts that can occur as part of a genocide, such as mass killing or sexual slavery³⁸ is another issue that arises in light of the attacks on the Yazidi people. I do not want to equate the experience of sexual slavery with death for the same reason that I do not want to locate the harm of rape in injury to honor. Sexual slavery should not necessarily result in the loss of any reason to keep living. But I want to capture the nature and seriousness of the harm, to individuals and their communities, without equating sexual slavery with killing. Thus, I argue for a conception of the wrongness of sexual slavery that is based on a view of well-being that identifies at least some objective aspects of well-being, including a right to bodily integrity and freedom of movement.

I return to the question of how to classify IS as an organization in Chapter Four. Not only does this classification ambiguity generate ontological questions, but it affects how we think about states and the international community. Most of the answers to the responsibility questions hinge on whether IS is classified as a state or a terrorist group. In June 2014, IS declared a caliphate, or Islamic State, covering large areas of Syria and Iraq. In this declaration, IS

invokes a specific utopian imagination of the resurrection of the Muslim *ummah* (nation) and the Caliphate (Islamic empire). It rejects the modern nation state and the states created during the colonial period and instead calls for a return of the Caliphate of the Islamic *ummah*, which transcends nationalism and race. In this context, thousands of Muslim “Jihadists” from around the world have joined

³⁸ Various acts of mass sexual violence can constitute genocide, if they are intended to result in the destruction of the group, and they involve one or more of the following: “(b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group.” U.N. General Assembly, *Convention on the Prevention and Punishment of the Crime of Genocide*, 9 December 1948, art. II.

together to take part in establishing a new “Islamic State” with a social, territorial, and political agenda.³⁹

IS conceives of this imagined community as “a transition from the prevalent imagination of the nation and the nation state to a religious imagination that runs counter to the nationalist movements from the colonial and postcolonial periods.”⁴⁰ Yet despite the fact that the Islamic State would be governed by Sharia law, the functions of the caliphate would be the same as a modern state: all the “affairs of individuals and the society at large, government administration, the rights and duties of citizens, the judicial system, laws of war and peace, and international relations.”⁴¹ This claim of statehood presents various political problems, since IS has claimed territory in Iraq and Syria, as well as problems of attributing responsibility.

First, there is a question about what the relationship is between IS and the Yazidi people. If IS is a terrorist group (or a non-State actor), then the relationship between IS fighters and the Yazidi people is likely one of civilians relating to civilians, or some other relationship between civilian and non-state institution. However, if IS is a state, as it argues it is, then the relationship between IS and the Yazidi people involves different obligations. It might be that the Yazidi people are citizens of the Islamic State, in which case the harm of sexual slavery is a harm done by IS to its own citizens. Or it might be that the Yazidi people are citizens of a different state, and that IS is perpetrating harms on citizens of another state. Each of these scenarios would invoke particular obligations on the part of the international community or particular states.

³⁹ Yosef Jabareen, “The Emerging Islamic State: Terror, Territoriality, and the Agenda of Social Transformation,” *Geoforum* 58 (2015): 52. Italics added.

⁴⁰ *Ibid.*, 53.

⁴¹ *Ibid.*; Gail Minault, *The Khilafat Movement: Religious Symbolism and Political Mobilization in India* (New York: Columbia University Press, 1982).

It also might be that the Yazidi people are some other category of people living in the Islamic State with a status different from that of full citizen. Islamic law suggests that the aim of the Muslim world is to bring the entire world to the Islamic faith, and thus the Muslim world consists of two parts: the Muslim and the non-Muslim. For IS, the Islamic State is the Muslim part of the world, which is known as *dar al-islam*, or the “domain of Islam,” while the rest of the world is *dar al-harb*, or the “domain of war.” The *dar al-Islam* refers to communities of Muslims, but also has historically included “non-Muslim communities, the *dhimmis* (protected people), whose separate communal laws and leaders were tolerated by the Islamic state as long as they did not challenge Muslim sovereignty.”⁴² The *dhimmis* (mostly Christians and Jews) were permitted to retain their own religions, but they were required to pay a poll tax to the Islamic authority.⁴³ The *dar-al harb*, however, existed in a “state of nature” because the *dar-al harb* “lacked the standard of justice granted to believers under the Islamic public order.”⁴⁴ So the Yazidis could be *dhimmis*, protected people living under the sovereign rule of ISIS. Or they could be part of the *dar-al harb*, which means IS sees them as outside the rule of law governing states, and already in a potential state of war. I argue that IS’s obligations to the Yazidi people are at least negative obligations of non-interference with civilians, if IS is a terrorist group, which I think is the most plausible classification. But if IS is a state, as IS claims itself to be, then IS has positive obligations to protect the Yazidi people, either as citizens or as *dhimmis*.

⁴² Sohail H. Hashmi and James Johnson, “Introduction,” in *Just Wars, Holy Wars, and Jihads: Christian, Jewish, and Muslim Encounters and Exchanges*, ed. Sohail H. Hashmi (New York: Oxford University Press, 2012), 10.

⁴³ ‘Abd Allāh Aḥmad Na‘īm, *Islam and the Secular State: Negotiating the Future of Shari‘a* (Cambridge, Mass.: Harvard University Press, 2008), 31; Khadduri, *The Islamic Conception of Justice*, 163.

⁴⁴ Khadduri, *The Islamic Conception of Justice*, 163.

The next question about statehood targets the relationship between IS and the rest of the world, as individual states, regional institutions, and the global community as a whole. This bears on the responsibilities of these other actors in preventing and responding to mass atrocities. It does not seem that the rest of the world would classify IS as a state, but rather as a terrorist group or a non-state actor. So if IS sees itself as a state, there is likely a conflict between the group and the rest of the world as to how IS should be recognized. Recognition of IS as a state would invoke the application of international legal norms, including norms related to war and human rights, so it may be that there is a benefit to recognizing IS as a state. But it is also the case that recognition of IS as a state would violate the sovereignty of states in the region, particularly Syria and Iraq. Again, it seems most plausible to view IS as a non-state actor, because their claims of territory or legitimacy as a state are invalid.

The final chapter builds on my conceptions of groups, harm, and political relationships to answer moral questions about how to assess responsibility in the case of the Yazidi women and girls. In Chapter Five, I consider how we should hold IS morally responsible for the mass sexual enslavement of Yazidi women and girls, as a group and with respect to the individual members. I argue for a version of collective responsibility that locates a significant amount of agency within the group of IS as an entity, not any individual member of the group. But I also locate some amount of agency and corresponding moral responsibility within each member of the group. The case presented by IS and the Yazidi women and girls is not like most instances of sexual violence as spoils or weapons of war. This is because the sale of the women and girls to individual IS fighters separates the actions of the individuals from those of the group in an important way. The group norms clearly require the practice of sexual slavery, but the ongoing use of the practice is enacted by individuals, not the group. Finally, I locate shared

responsibility for the failure to prevent harm (and further harm) to the Yazidi women and girls in the Sunni Arabs and the international community.

The recent (and on-going) case of the Yazidi women and girls presents a serious, real-world issue that has not been solved, either in theory or in practice. Not only is this particular experience an on-going particular problem, it is indicative of the kinds of problems we have seen elsewhere, and will likely continue to see around the globe. For this reason, the project of breaking down the conceptual frameworks underpinning mass sexual slavery at the hands of terrorist groups is an important one. We cannot hope to address the international problems of religious fundamentalist terrorism and mass sexual slavery in practice until we can analyze and explain the underlying concepts.

CHAPTER II – VIOLENCE AND SOCIAL GROUPS

In Chapter One, I identified a practical problem, that of how we should respond to the sexual enslavement of Yazidi women and girls by members of IS. In this second chapter, I begin to unpack the various philosophical questions related to this problem, beginning with how we should understand groups, particularly perpetrator groups and victim groups. My analysis of the ontological status of groups is instrumental for answering questions about group harm and group responsibility, as well as individual harm and responsibility, particularly individuals “on the margins” of groups with respect to their culpability or experience. I will address these questions in later chapters.

In this chapter, I begin with an overview of the literature on the status of groups, focusing solely on ontological questions at this stage, rather than questions of rights, harms, or responsibility. I explore individualistic, collectivist, and hybrid accounts of the ontological status of groups. I go on to defend a hybrid account of groups, which is the best way to think about both victims and perpetrators in my case study. I want to be able to identify a group as a distinct unit without erasing individuals, and maintain the ability to capture the particular experiences and actions of individuals. In the final section of this chapter, I look at how this account works with respect to perpetrator groups and victim groups, including individuals we might think are on the margins of the groups. I have presumed a particular account of the perpetrators and victims involved in the sexual slavery of the Yazidi women and girls, and here I try to find the best conceptual scheme for explaining the account.

2.1 Kinds of Social Groups

The term “social group” can be used to describe many different entities, from “the 1993 UNC-Chapel Hill men’s basketball team” to “Buddhists” to “my first cousins.” These

three examples involve different kinds of temporal permanence, choice, shared intent, and internal group relationships, to name just a few of the divergent aspects of social groups. One broad way to distinguish between types of social groups is David Copp's distinction between organizations and aggregates.¹ An organization is "formally organized," while aggregates are mere groups of individuals.² Aggregates can be further subdivided into accidental aggregates, involving individuals who happen to be in close proximity to one another, and purposeful aggregates, which involve individuals with quite similar or identical purposes.³

Brian Epstein has recently argued that these kinds of groups are so varied that we cannot analyze them all in the same way, so we should not try to classify groups as we have in the past.⁴ I argue that we need to be able to establish certain minimum conditions for all social groups. There will, of course, be differences, but I will try to establish that these are due largely to the kinds of questions we want to ask about groups, not due to serious and irreconcilable ontological differences. This will become clear when my account is applied to victim and perpetrator groups in this chapter, and to states and non-state actors in Chapter 4.

I give an account of the ontological status of groups that is generally applicable, but it will not be comprehensive. Rather, I aim to give a plausible, sparse account that can help answer questions about IS, the Yazidi women and girls, and members of the global community. This case is a representative example of the general problem of intergroup violence, so this account can be applied to similar problems that exist elsewhere. I consider

¹ See David Copp, "What Collectives Are: Agency, Individualism and Legal Theory," *Dialogue: Canadian Philosophical Review/Revue canadienne de philosophie* 23, no. 2 (1984). Here, I use Copp's terminology, although others have made the cut differently. See, e.g., Katherine Ritchie, Tracy Isaacs, etc. I use his terminology because it is quite broad, and does not anticipate a collective intentionality requirement, or other distinctions that might be made between kinds of social groups.

² Ibid., 250.

³ Ibid., 253.

⁴ See Brian Epstein, "What Are Social Groups? Their Metaphysics and How to Classify Them," *Synthese* (2017).

more specific questions about perpetrator social groups and victim social groups later in the chapter, and about states and non-state actors as groups of individuals, engaged in asymmetric conflict, in Chapter 4.

In the sections that follow, I consider the three main kinds of views about the ontology of social groups. Within each of the sets of views I consider, I assess how the views handle particular features of groups. I also introduce the most compelling objections to the views. Because I go on to defend a hybrid account of group ontology, I focus more space on comparing the hybrid views.

2.2 Collectivism

The first way we might think about groups, *holism* or *collectivism*, is as irreducible to the individuals who make up the group. On this account, the status of individual agency more or less fades in light of the group entity, because the actions of a group cannot be understood as the mere sum of the actions of its individual members. For the collectivist, there are emergent properties that appear only at the level of the group and do not apply to any of the component parts (individuals). These views of groups attempt to capture the idea that there are some collective actions that could not be taken without the participation of multiple individuals, working together to achieve an objective. Collectivist views recognize the existence of both individuals and groups as material particulars, but they see social groups as significantly more important than individuals in terms of explaining our social world.

Emile Durkheim was an early defender of this type of view. In arguing for the existence of social facts, Durkheim claimed that social facts are constituted by “the beliefs, tendencies and practices of the group taken collectively,”⁵ which are distinct from the

⁵ Emile Durkheim and Steven Lukes, *The Rules of Sociological Method*, trans. W. D. Halls, 2nd ed. (Hampshire: Palgrave Macmillan, 2013), 23.

“thoughts to be found in the consciousness of each individual.”⁶ Social facts, according to Durkheim, “assume a shape, a tangible form peculiar to them and constitute a reality *sui generis* vastly distinct from the individual facts which manifest that reality.”⁷ Durkheim argues that individuals accept the influence of these distinct social forces because they are regarded as the “work of the collectivity,” our society and its previous generations.⁸ For Durkheim, a group is also a distinct entity, because it is “a product of shared existence, of actions and reactions called into play between the consciousnesses of individuals.”⁹ The social facts that influence groups of individuals who act in concert constitute a “force,” one that “is propelling [the individuals] in the same direction.”¹⁰

Margaret Gilbert’s plural subject theory is a more recent collectivist account of social groups.¹¹ Gilbert offers a non-reductionist view of groups, claiming that groups are objects that help us provide the best explanations of how the social world functions. For Gilbert, social groups are characterized by two features in particular: shared intentions, and a commitment of the individual members of a group to the entity of the group as a whole. A social group, according to Gilbert, is a plural subject, which she understands to describe the phenomenon that occurs “when certain individual people are in specific psychological states, that is only when they are jointly committed with certain others in some way.”¹² The joint

⁶ Ibid.

⁷ Ibid., 23-24.

⁸ Ibid., 25.

⁹ Ibid.

¹⁰ Ibid.

¹¹ See Margaret Gilbert, “Modelling Collective Belief,” *Synthese* 73, no. 1 (1987); *On Social Facts*, International Library of Philosophy (New York: Routledge, 1989); *Living Together: Rationality, Sociality, and Obligation* (Lanham, MD: Rowman & Littlefield, 1996); *Sociality and Responsibility: New Essays in Plural Subject Theory* (Lanham, MD: Rowman & Littlefield, 2000); *A Theory of Political Obligation: Membership, Commitment, and the Bonds of Society* (New York: Oxford University Press, 2006); *Joint Commitment: How We Make the Social World* (New York: Oxford University Press, 2014).

¹² Gilbert, *Living Together: Rationality, Sociality, and Obligation*, 9.

commitments of group members can involve joint actions, intentions, and/or beliefs.¹³ Doing something as a plural subject is “not a matter of ‘all doing it’ but rather a matter of ‘all acting in such a way to constitute a body that does it.’”¹⁴ It will be important for our purposes later to note that on Gilbert’s view, one can be coerced into a joint commitment, but it would not be possible to be part of a plural subject without intention.¹⁵

A final version of collectivism I will touch on is the view promoted by Paul Sheehy. He adopts a realist view he calls “interrelational holism” in which he claims that “groups are material particulars which, alongside individual persons and artefacts, count as objects in the social world, figuring in our explanations and descriptions.”¹⁶ Sheehy’s view is more modest than Gilbert’s view with respect to what sorts of collective intentions are required to constitute a group,¹⁷ and his ontological claims are more explicitly focused on defending the idea that two material objects of different kinds (i.e. individuals and groups) can occupy the same space at the same time.¹⁸

I now consider some important aspects of what it means for a group to have the status of a material object, in terms of intention, which includes shared beliefs and actions, group identification, and the relationship among group members. I note that there are a wide range of collectivist views, and I only analyze each category in broad strokes.

¹³ See Gilbert, *Joint Commitment: How We Make the Social World*.

¹⁴ Margaret Gilbert, “Obligation and Joint Commitment,” *Utilitas* 11, no. 2 (1999): 147.

¹⁵ Gilbert, *Sociality and Responsibility: New Essays in Plural Subject Theory*, 6.

¹⁶ Paul Sheehy, *The Reality of Social Groups* (Burlington, VT: Ashgate Publishing, Ltd., 2006), 2. The idea of a material particular, according to Sheehy, is “of something in space and time, which can be individuated, counted and described. Such an entity can remain the very same thing while its properties change through time.” *Ibid.*, 4.

¹⁷ See Paul Sheehy, “On Plural Subject Theory,” *Journal of Social Philosophy* 33, no. 3 (2002).

¹⁸ See Sheehy, *The Reality of Social Groups*, chapter 4.

2.2.A Intention

One of the main distinctions we might be inclined to make between a group as a material object, and a group as a mere aggregation of individuals, relates to the psychological states of the individuals in a group. Gilbert and some other collectivists adopt *intentionalist* views that “individuals must conceive of themselves in some particular way (for example as being or forming a group, as sharing certain ends or values), or possess certain shared intentional or psychological states” for the individuals to constitute a group.¹⁹ According to Gilbert’s plural subject theory, “intentions (broadly construed) are logically prior to collectivities.”²⁰ Two persons have a “shared intention to [perform an action] if and only if they are jointly committed to intending as a body to do A.”²¹ For Gilbert, an individual might have personal intentions, but could only have shared intentions as part of a joint commitment with other individuals.

If we accept the intentionality requirement, then we can think about two realms of joint commitment: the shared beliefs that make up the group’s common knowledge, and the joint action or intended action that comes out of the shared beliefs. The idea of joint commitment is based on an understanding of the parties to the commitment as parts of a unitary whole, rather than as individuals who happen to have the same beliefs and intentions. The acting as a unitary whole means “together to constitute, as far as is possible, a single body,”²² where the single body is our plural subject. Gilbert understands the members of a group to “collectively believe that p if and only if they are jointly committed to believe that p as a body.”²³ Joint actions can only occur when the common knowledge of individuals

¹⁹ Ibid., 4-5.

²⁰ Gilbert, *On Social Facts*, 12.

²¹ Margaret Gilbert, “What Is It for Us to Intend?,” in *Contemporary Action Theory Volume II: Social Action*, eds. Ghita Holmström-Hintikka and Raimo Tuomela (Dordrecht: Kluwer Academic Publishers, 1997), 22.

²² Gilbert, *Joint Commitment: How We Make the Social World*, 64.

²³ Margaret Gilbert, “Belief and Acceptance as Features of Groups,” *Protosociology* 16 (2002): 42.

includes expressions by each party of “personal readiness to enter a joint commitment to endorse a certain goal as a body.”²⁴ So while joint action does not require an explicit agreement between joint actors, it does require shared beliefs and shared goals to act as a whole, rather than as discrete individuals.

On Gilbert’s view, individuals who enter a joint commitment gain a special standing in relation to the others, such that “[i]f one violates the commitment, the other is in a special position to object.”²⁵ She claims that “a joint commitment grounds mutual claims for conformity. In other words, it grounds rights of the parties against each other, rights to conformity to the commitment.”²⁶ The language of rights sounds strong, but Gilbert notes that they only exist by virtue of the joint commitment, and are not grounded in morality.²⁷ Thus plural subject theory presumes the existence of relationships among group members, and of mutual obligations that come about in light of a joint commitment. But it does not presume any particular organization of these relationships.

Collectivists who reject the intentionalist view, such as Sheehy, do not require the shared beliefs, intentions, or actions among individuals for the individuals to make up a group. Sheehy argues that “[a]ll that is conceptually necessary and sufficient for the formation and maintenance of a group (or to be a member) is that individuals interact in a way that unites them as a unit, as a body with its own impact on the world – typically on them as members.”²⁸ The value of groups lies in action that can only be explained *qua* entity, and not the individual parts of the entity. He claims that plural subject theory, in particular, “identifies a common feature of group membership with a necessary condition for the existence of a

²⁴ Gilbert, *Joint Commitment: How We Make the Social World*, 33.

²⁵ Ibid.

²⁶ Ibid., 34. See also Gilbert, “Obligation and Joint Commitment.”

²⁷ Gilbert, *Joint Commitment: How We Make the Social World*, 35.

²⁸ Sheehy, *The Reality of Social Groups*, 5.

group,” while he thinks the intentionality question should be separate from questions about the existence of a group.²⁹

Thus the question of the relationship between and among group members is much more important for a collectivist who rejects intentionalism. Sheehy’s interrelational holism understands the whole of a group not in terms of mutual obligations, but in terms of a more specific organization of the “relationship between the constitutive parts” and the relationship between those parts and the whole.³⁰ On this view,

A group is just a more or less complex organisation of individuals through time. The existence of a group is contingent on the patterns of interrelations being such that the individuals are united into a whole or body, which comes to exert an impact on the world – typical amongst which is an impact on the members themselves. Ultimately, then, the notion that groups are material objects rests on the view that individuals are related or organised in ways that give rise to a body with causal powers and properties.³¹

Sheehy’s view of groups can be distinguished from aggregates based on the structural nature of these relationships. Aggregates, according to Sheehy, cannot be identified with groups because they do not permit the individual members of a group to change over time,³² but if the relationships are part of a pattern or organization, they do not disappear as the individuals change. For the non-intentionalist, the existence of the group is determined by the ability of the individuals to relate to one another in such a way as to function as a single entity, regardless of the intentions, beliefs, or obligations of one member of the group to another.

A final result of the collectivist view with respect to intention is that it can inform both internal and external group identification. We can think about groups in terms of how they are identified, both by the individuals who are arguably part of the group (internal identification)

²⁹ Sheehy, “On Plural Subject Theory,” 382-83.

³⁰ Sheehy, *The Reality of Social Groups*, 99.

³¹ *Ibid.*, 100.

³² *Ibid.*, 22.

and those who are outside the group (external identification). Collectivist views about groups presume that there is an external, objective status that can be attributed based on particular features of groups (although they sometimes disagree about what those features are). So on this view, it seems that the external identification of the group could overshadow any lack of internal identification. However, the intentionalist views would make the internal group identification a necessary condition for external recognition of the group, since the individual members could not accidentally find themselves as participants in a group. As Gilbert notes, “individual human beings must see themselves in a particular way to constitute a collectivity.”³³ Thus, the internal and external identification of a group should correspond, under intentionalist views. However, a view that does not require intention on the part of individual group members could result in an externally identifiable group which meets the requirement of joint action, but where the group’s members do not self-identify with the group.

2.2.B Objections

Briefly, since I will consider an opposing set of views in the following section on individualism, I note the most compelling objections to collectivism. The first is the purely metaphysical problem created by the idea that two material particulars, i.e. groups and individual persons, can inhabit the same space at the same time. In other words, identifying groups as material particulars means we are double-counting when we are also identifying the individual persons who make up the group as material particulars. We might think that this just reflects the idea that groups are composed of individuals, but this leads us to ask what materially makes the group any different from the aggregate sum of its parts. Practically, if

³³ Gilbert, *On Social Facts*, 12.

one reason we think about groups is to attribute responsibility, it is not hard to see why this metaphysical problem might result in absurd practices of blaming, in which we blame an individual twice, in both her individual capacity and her capacity as a member of a group, or only as one entity (when she is clearly part of both).

Another objection to collectivism also becomes apparent when we think about practices of attributing responsibility, and that is the idea of holding groups responsible at all. Even if we can identify groups as material particulars, we might still think it absurd to attribute psychological states or legal liability to a group, rather than to the human individuals that constitute that group. Not only is this a challenge, logistically, but we also might think it ignores how we conceive of choices made by individuals when they appear to be pursuing a joint action with other individuals. It matters whether the choices of individuals are seen as the separate choices of individuals or the aggregated choices of the group. An account of groups, by my lights, should not force us to ignore the choices and intentions of the individuals who make up a group by conceiving of them as a single, unified choice.

2.3 Individualism

The second way we might think about groups is in terms of its individual parts. If there is nothing (or little) more to a group than the individuals that make up the group, then we can reduce the concept of the group to those individuals with no remainder. In other words, there is nothing left of the group to refer to as a material particular, outside of the individuals themselves. We could also adopt a more moderate view, that whether or not there is a remainder (materially or practically), the individual persons are what is important about the group. I will refer to this set of views as *individualist* accounts of groups. For an individualist,

it is individuals who determine social facts, rather than groups. As with the collectivist views, there are a wide range of individualist views, and I will only examine a few proponents.

John Stuart Mill provides an early explanation of an individualist view of society. He describes society as “nothing but the laws of the actions and passions of human being united together in the social state.”³⁴ Thus, he denies that the social world is anything over and above the individuals who constitute the parts of the social world. Mill claims that individuals “are not, when brought together, converted into another kind of substance,” but that they remain individuals.³⁵ For Mill, all of the properties of a group of individuals can be explained in terms of the individuals that make up the group.

J.W.N. Watkins expands on Mill to defend what he calls “methodological individualism,”³⁶ a view that entails the idea that people determine social facts. He argues that “large-scale *social* phenomena must be accounted for by the situations, dispositions, and beliefs of individuals.”³⁷ Social facts “should be explained by being deduced from (a) principles governing the behavior of participating individuals and (b) descriptions of their situations.”³⁸ Watkins rejects the idea that we should be concerned with social groups because “social ‘things’ like laws, prices, prime ministers and ration-books, are created by personal attitudes.”³⁹ He compares the human social group to a half of a bifurcated bee hive, which he

³⁴ John Stuart Mill, “On the Logic of the Moral Sciences (Book VI),” in *A System of Logic, Ratiocinative and Inductive, Part II* (Buffalo, NY: University of Toronto Press, 1981), 879.

³⁵ Ibid.

³⁶ On at least one understanding, “methodological individualism” is not a metaphysical view. Watkins, among others, adopted this view from the perspective of the philosophy of science rather than metaphysics. While Watkins claims that he is taking a metaphysical position, it also seems that he is taking a methodological position, that this is the best way of accounting for the world as it exists, which does not necessarily entail a grand metaphysical position.

³⁷ J. W. N. Watkins, “Methodological Individualism: A Reply,” *Philosophy of Science* 22, no. 1 (1955): 58. Italics in original.

³⁸ J. W. N. Watkins, “Ideal Types and Historical Explanation,” in *Readings in the Philosophy of Science*, eds. Herbert Feigl and May Brodbeck (New York: Appleton-Century-Crofts, 1953), 729.

³⁹ Ibid.

claims is an “organism in the sense that its components’ behavior is determined by teleological principles which apply to the whole half-hive and which cannot be derived from a knowledge of individual bees.⁴⁰ Social groups of humans, on the other hand, are not organisms, because they can be “reduced” to the individuals that comprise them, and social phenomena to the individual attitudes that comprise them. Methodological individualism, for Watkins, supports the idea that social groups are not organisms, but consist of “people who behave fairly intelligibly and who influence each other, directly and mediately, in fairly comprehensible ways.”⁴¹

Keith Sawyer offers a non-reductive view of individualism that focuses on supervenience, embracing “ontological individualism” instead of methodological individualism. For Sawyer, individuals exist, while groups do not. He claims that “sociological objects and properties are nothing but combinations of the individual participants and their properties.”⁴² Sawyer’s ontological claims rely on the concept of supervenience, the idea that there is an “ontological relationship of dependence between properties”⁴³ where higher-level properties supervene on lower-level properties. With respect to individuals and groups, supervenience involves the claim that any properties of groups, such as beliefs or actions, depend on the corresponding properties of the individuals that constitute the groups. Sawyer notes that “if a collection of individual properties with a given set of relations causes a certain social property to obtain on one occasion, then that same collection of individual properties in that same set of relations on another occasion will cause the same

⁴⁰ Ibid., 731.

⁴¹ Ibid., 732.

⁴² R. Keith Sawyer, “Nonreductive Individualism: Part I—Supervenience and Wild Disjunction,” *Philosophy of the Social Sciences* 32, no. 4 (2002): 537.

⁴³ Mark W. Risjord, *Philosophy of Social Science: A Contemporary Introduction*, (New York: Routledge, 2014), 127.

social property to obtain.”⁴⁴ The beliefs and actions of groups cannot change without changing at the level of individual beliefs and actions. Sawyer argues that while the individual-level properties that manifest in a group can be reducible to the properties of individuals, there may also be social properties present in the actions of groups of people that cannot reduce to individual-level properties.⁴⁵ Sawyer’s view can be distinguished from methodological individualism because he accepts that social properties may not be reducible to individual properties.⁴⁶ He gives the example of “competitive team sport” as a natural kind term that cannot easily be reducible to natural kind terms of individuals,⁴⁷ but if methodological individualism is true, then there must be a “coextensive set of individual natural kind predicates”⁴⁸ for this sociological natural kind term.

I turn to some important aspects of individualism in terms of group identification, which involves accounting for the relationships among group members and collective action. Again, I note that there is a wide range of individualist views, and I cannot account for each view here.

2.3.A Group Identification

I noted in the previous section that one important distinction we could make between viewing a group as an aggregation of individuals and as a material object involves the mental states of the individuals. I suggested that shared mental states may involve shared goals or simply a shared and organized activity. In this section, we have seen that an individualist account of groups may or may not recognize the group as a distinct object at all. If the group members share beliefs, intentions, and actions, then on an individualist account, these will

⁴⁴ Sawyer, 543.

⁴⁵ See *ibid.*

⁴⁶ *Ibid.*, 547.

⁴⁷ *Ibid.*, 549.

⁴⁸ *Ibid.*, 551.

replicate at the level of the group. But this does not guarantee that the individuals will (a) participate in collective action, (b) have particular kinds of relationships with one another, or (c) self-identify with a group. I focus in this sub-section on whether and how we can identify a group under an individualist model.

For the individualist, there is no necessary relationship among individuals who are in one and the same group.⁴⁹ A collective of individuals do not need to have responsibilities toward one another or any interest in one another whatsoever, nor would the presence of these features be helpful in explaining group activities, as a whole. If the idea of a group can be explained in terms of the individuals that constitute the group, then there is no need to explain the social group as a unified entity. Thus if each member of a family maintained the same associative obligations toward one another, then those obligations could be helpful in explaining the family as a single entity, but only insofar as the associative obligation was a motivating factor for each individual member of the family in acting as part of the collective. It would not be useful in explaining a larger social dynamic between and among family members.

Similarly, the combination of the actions of individuals can be seen as nothing more than the additive effect of each individual's contribution to a cause, rather than as a collective action. Even if we identified the aggregation of a group of individual actions with the unified moniker of a group, the individualist could say that the moniker merely serves as a convenient way of talking about the individual actions all at once. The individualist would still be able to either reduce the group action to the actions of each individual, or at least explain the group action in terms of the action and beliefs of each individual.

⁴⁹ Paul Sheehy identifies a group of views he calls "interrelational individualism," but I would instead classify these views as hybrid views, and thus I address them in the next section. See Sheehy, *The Reality of Social Groups*.

Identification of a group can then be most easily accomplished through the internal, self-identification of the individuals in the collective unit with the group. The efficacy of this tactic relies, however, on the interest of the individual members in self-identifying with a group, rather than identifying as individuals who share in their beliefs and actions with other individuals. Should this not be the case, such that the individuals prefer not to self-identify with the group, a group can still be identified externally based on the same criteria of shared beliefs, attitudes, and actions. Again, if the individuals do not self-identify with the group, any group moniker will only be useful insofar as it is convenient.

2.3.B Objections

Individualist views appear to suffer from their inability to acknowledge the potential significance of social structures and influences, in addition to the concept of collective action altogether. It seems that there are certain phenomena that cannot not be explained solely in terms of the beliefs and actions of individuals, or at least certain actions that cannot be accomplished solely by the discrete actions of individuals. An individual is necessarily limited, at least to some extent, by her physical location and her location in time. She may be able to direct others to act or use technology to perform certain tasks without her physical presence, but she will still be limited in her ability to perform large, complicated feats. There are social events and phenomena that appear impossible to explain without accounting for the joint efforts of many individuals, whether intentional or unintentional, whether coordinated or uncoordinated. A football match, the performance of a symphony, and the civil rights movement all seem impossible to explain as the mere aggregation of the efforts of individuals, because they involve coordination and results that go beyond the additive effect of the individual efforts. This objection makes Sawyer's non-reductive version of individualism look

more compelling than the others, yet it still leaves us without all the resources we might want in order to describe such joint or collective phenomena. In the next section, I will explore some views that are less limiting in terms of explanatory resources.

2.4 Hybridism

I now turn to what we might think of as hybrid views that recognize the subjecthood of both social groups and the individuals that constitute the members of the groups. Many, including Sheehy, do not recognize the existence of hybrid views on group ontology, and they classify these views somewhere on the spectrum of either individualism or holism.⁵⁰ The third category of *hybridism* is important, I argue, because it will allow for shared responsibility between individuals and groups of which the individuals are a part, instead of demanding the ontological priority of one entity over another.

David Copp's hybrid view is one that some categorize as individualistic,⁵¹ but is better seen as one that takes advantage of both individualist and collectivist features, because he sees both collectives and individuals as entities which can be agents. For Copp, a group is in some sense just the aggregate of the individuals that make up the group. Yet this is not sufficient, on his view, because it doesn't capture the fact that collectives change membership while they persist over time.⁵² Thus, in order to capture the different time-slices of a group, he proposes that a group should be regarded as "a complex of its stages," where a stage is the aggregate of the individuals who are members of a group at a given time.⁵³ An aggregate is a group when it "exhibits an appropriate kind and degree of historical continuity in purpose

⁵⁰ See Sheehy, *The Reality of Social Groups*.

⁵¹ Sheehy, for instance, refers to Copp's view as a "weak ontological individualist" view. *Ibid.*, 21.

⁵² Copp, "What Collectives Are: Agency, Individualism and Legal Theory," 252.

⁵³ *Ibid.*, 253.

and/or membership.”⁵⁴ Thus Copp’s hybrid view focuses on groups as the sum of individuals persons, but it has two benefits that are not present in most individualist accounts. First, he can account for changes in group membership over time or by choice, which is a challenge for a traditional individualist view that does not recognize the ontological status of a group. Second, Copp’s account requires a level of shared purpose for an aggregate of persons to constitute a group, a feature that is also lacking in most individualist views.

Like Copp, Christian List and Philip Pettit view both individuals and certain groups as capable of exerting agency, although their account is more in line with the collectivist tradition and its concept of emergent properties. For List and Pettit, groups are distinguished from “mere collections” of individuals in terms of their agency.⁵⁵ A group agent must satisfy three criteria. First, the group agent must have “representational states that depict how things are in the environment.”⁵⁶ Second, the group agent must have “motivational states that specify how it requires things to be in the environment.”⁵⁷ Finally, the group agent must have “the capacity to process its representational and motivational states,” so that it can intervene in the environment.⁵⁸ According to List and Pettit, a group’s attitudes are generated directly out of the individual attitudes of those who make up the group. However, they argue that the aggregation of individual preferences cannot produce appropriate group decisions, thus there has to be an identifiable group agent that “makes” decisions for the group, which they refer to as “holistic supervenience.”⁵⁹ While this group agent is a “real agent,” List and Pettit still

⁵⁴ Ibid., 254.

⁵⁵ Christian List and Philip Pettit, *Group Agency: The Possibility, Design, and Status of Corporate Agents* (New York: Oxford University Press, 2011), 32.

⁵⁶ Ibid., 20.

⁵⁷ Ibid.

⁵⁸ Ibid.

⁵⁹ Ibid., 59.

claim to adopt a version of methodological individualism that denies the existence of any psychological forces exerted on or on behalf of the group agent.⁶⁰

Larry May's view of groups has been categorized by some as individualist, despite his explicit adoption of a "middle position."⁶¹ He describes his view of groups as "individuals-in-relationships," where individuals are the focus in terms of intention and action, but we must look to the group structure in order to explain the relationship between the individuals.⁶² He argues that the group structure is "often best seen as a relational property, not a property inhering in the individuals themselves,"⁶³ thus his view requires an analysis of both individual and collective features of a social group. May seeks to explain groups in terms of the manifestation of relationships between group members, and is focused on the actual collective action that manifests rather than the formal, institutional structure of the group.⁶⁴ He argues that "when a collection of persons displays either the capacity for joint action or common interest, then that collection of persons should be regarded as a group."⁶⁵ Thus he sees putative groups like mobs or bystanders to an event as constituting groups when they have the capacity for joint action or common interest. This capacity, or set of relationships, is located in the structure of the group rather than in the individuals, but this does not make the group exist independently of the individuals.⁶⁶

⁶⁰ Ibid., 4.

⁶¹ Larry May, *The Morality of Groups: Collective Responsibility, Group-Based Harm, and Corporate Rights* (Notre Dame, Ind.: University of Notre Dame Press, 1987), 24-30.

⁶² Larry May, "Group Ontology and Legal Strategy: A Reply to Tam," *Business and Professional Ethics Journal* 8, no. 1 (1989): 83.

⁶³ Ibid.

⁶⁴ May, *The Morality of Groups: Collective Responsibility, Group-Based Harm, and Corporate Rights*, 25-26.

⁶⁵ Ibid., 29-30.

⁶⁶ Ibid., 23.

Raimo Tuomela initially identified as an individualist, but in recent years he has argued that

neither individualism nor collectivism is capable of expressing the whole truth, so to speak: both individualist (I-mode) and collectivistic (especially, we-mode) concepts and mental states are needed to explain, for example, social action and social institutions. Hence individualism needs to be supplemented by irreducible we-mode states and attitudes in order to fulfill the social scientific task of describing and explaining the social world as accurately and defensibly as possible.⁶⁷

Tuomela's view distinguishes between the "I-mode" and the "we-mode" in terms of ways we can think about how individuals act within groups. The we-mode approach is based on the idea that "the primary acting agent in central group contexts is the group viewed as an intentional agent, while the individual members of the group are the primary ontological agents acting as representatives for the group."⁶⁸ As in the collectivist views, the individuals in the group are socially constructed by the group.⁶⁹ The we-mode is distinguished from the I-mode based on the reasons an individual has for acting. Tuomela says that "[a]ll intentions are necessarily related to one's own actions,"⁷⁰ but those actions can be more or less part of a joint action on behalf of a group. In the we-mode, the group is promoting the interests of the group, and the joint actions of the group are performed with the intention of acting in furtherance of the group's interest. The I-mode, on the other hand, involves individuals acting for their own private reasons. An individual can still be part of a group, and still be acting in accordance with the group's interest, but the individual's intention is to further her own

⁶⁷ Raimo Tuomela, *Social Ontology: Collective Intentionality and Group Agents* (New York: Oxford University Press, 2013), 4-5.

⁶⁸ *Ibid.*, 2. Frank Hindriks challenges this view on the basis that groups cannot have intrinsic intentionality. See Frank Hindriks, review of *Social Ontology: Collective Intentionality and Group Agents*, by Raimo Tuomela, *Economics and Philosophy* 31, no. 2 (2015).

⁶⁹ Tuomela, *Social Ontology: Collective Intentionality and Group Agents*, 2.

⁷⁰ Raimo Tuomela, "Joint Intention, We-Mode and I-Mode," *Midwest Studies in Philosophy* 30, no. 1 (2006): 36.

interest rather than the group as a collective. As Tuomela admits, “in real life one often acts both for group reasons and private reasons when performing an action. In such cases the central problem is whether the group reason is effective enough to make the agent satisfy the conditions for acting as a group member.”⁷¹

Due to the variety of hybrid views, there are a wide range of objections we might consider. And as I noted earlier, many disagree with the concept of a category of hybrid views at all, and would instead categorize these views as either individualist or collectivist, but perhaps with the objection that the views are inconsistent. As for the specific features of each hybrid view, they are subject to some of the same criticisms that befall their counterparts.

I adopt a hybrid view of the ontological status of groups, which I further explore in the next section, for two main reasons. First, I defend a hybrid account because many social groups do not function in ways that we could plausibly interpret as purely “individualistic” or purely “collectivist.” I agree with Tuomela, that neither individualism nor collectivism is capable of giving us all of the resources that we need to talk about individuals and groups, and that the hybrid views are better suited to this task. Not only is it useful to have both individualist and collectivist resources, it is in fact necessary in order to accurately capture the features of collective action. This is especially true given that I want to be able to apply the framework to cases in the real world, and the hybrid views mesh best with the particular account I am trying to explain. Thus, the upshot of these sorts of views is necessary for what I want to argue later in this dissertation, which is that responsibility for collective wrongs should be shared between groups and individuals.

⁷¹ Ibid., 52.

I also find Tuomela's view to provide the richest resources of the hybrid views I have examined. Where most of the hybrid views seek to find a balance between collectivism and individualism, Tuomela attempts to employ both. The I-mode and we-mode distinction allows us to capture a lot of what we think is intuitive about groups, as well as address some of the harder issues that will come up when we apply the theory to actual groups and individuals. It is to these questions that I turn in the next two sections.

2.5 Hybridism and Nonvoluntary Group Membership

Two features of Tuomela's view are most compelling. First, the we-mode view is more robust than many of the other hybrid views permit, acknowledging the significant impact of the social influence and explanatory power of group dynamics. Most of the hybrid views lean toward individualism, focusing on the intentions of the individuals but acknowledging the impact of relationships and social dynamics between individuals. Tuomela, along with List and Pettit, considers collectives to be capable of having their own distinct sets of intentions. The intention of the individuals involved in we-mode is more like the intention of the collectivist views, where a collective intention is usually required for collective action. Tuomela departs from List and Pettit where individuals remain the primary ontological agents, and this leaves open the possibility of holding individuals responsible for their actions, regardless of the collective nature of their joint actions. It seems fairly straightforward that a hybrid view like this one can account for both the individuals and a collective when the individual members of the group have clearly and intentionally chosen to be part of the group and part of the group's collective action.

The more challenging problem is how even hybrid views can account for less enthusiastic participants, yet I see Tuomela's view as containing a second crucial feature that

addresses this problem. The I-mode provides resources to understand an individual who is, in some sense, part of a group or collective, and perhaps even a participant in what would be described as a joint action of the other members of the group, but we wouldn't quite want to call the individual a joint actor herself. This would apply to cases where a group "member" is a nonvoluntary or involuntary participant in the group. Tuomela's we-mode, then, provides sharp (or fuzzy, as the case may be) relief to distinguish the group's intentions from the individual's intentions. I-mode is also crucial for understanding that even individuals who are fully group members sometimes make decisions for both personal and group-based reasons. While the other hybrid views may be able to explain these sorts of participants, they cannot make the same clear distinctions between the participants and the group itself.

2.6 IS Perpetrators and Victims

In this final section, I apply a hybrid view like Tuomela's to the case of IS and the Yazidi women, considering what it means to be a group that is perpetrating violence on another group, as well as what it means to be a victim group. Recall that in Chapter One I presented the case of the Yazidi women and girls who have been sold and held as sex slaves by IS fighters in Iraq and Syria, and I introduced some of the specific challenges that we face in trying to understand both the victims and the perpetrators as members of groups. If we assume the descriptive account I gave in Chapter One, the next step is to determine the best way to understand groups and individuals in light of the experience of the Yazidis and IS fighters. Description, I contend, informs our philosophical concepts here, and my adoption of Tuomela's hybrid view of groups will now function to help us understand the description. The hybrid model makes the most sense out of the description I have already drawn on, and since have assumed this to be an indicative experience, I now use Tuomela's hybrid view to help

explain the social meaning of the group status attributed to the IS fighters and the Yazidi women and girls.

2.6.A Perpetrators

A perpetrator group like IS begins with a shared ideology and shared interests, and likely personal relationships between members of the initial group members.⁷² IS is a group that purports to act in accordance with one ideology and as part of what the organization claims to be its religious duty of *jihad*. Members gradually join the group for a variety of reasons. Those who join for ideological or goal-based reasons will quickly become full-fledged agents of the group as they build individual relationships with the other group members. Individuals who become members of IS through coercion or force will likely build relationships first in order to survive, since they may be threatened with death or torture if they fail to support the cause of the group, but may become committed to the group beliefs due to time, proximity, and personal relationships. Each member of the group retains some level of autonomy, but this will vary with respect to the position within the group hierarchy.

The we-mode can straightforwardly account for the status of IS as a group that is consistently engaged in joint action. For some if not most of the members of IS, there is a shared goal of spreading Islam through acts of violence that further the aim of the establishment of an Islamic caliphate. For those who share this ultimate goal, the concept of collective action can explain how the individuals carry out different tasks that contribute to instances of joint action. Whatever other reasons the individuals might have, their shared intention of furthering the aims of the group are what make their action joint, and what make an external assessment of IS as

⁷² There are certainly other ways that a perpetrator group could form, such as when the individual participants have the shared goal of obtaining something of value. However, because my own aim is to answer questions about IS and other terrorist groups, I limit my analysis to groups with a shared ideology, or at least a shared purported ideology.

both a group and a group agent possible. The we-mode can also account for what might happen if a former group member defected, or if a captured individual did not indicate a willingness to be a part of the group at any time, and the “remaining” group members engaged in violence against the individual. The we-mode would likely consider the group to be engaged in joint action against someone who was not part of the group, and thus the we-mode would not be complicated by the violence.

The I-mode can help us understand at least two more complicated situations. The first is the IS member who is committed to the goal of the Islamic caliphate, but may not agree with all of the terroristic tactics that the group pursues as joint action. For instance, consider an IS member who intends to participate as a joint actor in all group acts of violence that are perpetrated against Westerners or against persons who must be conquered in order to obtain control over territory. However, this IS member does not share in the group’s interpretation of the Quran with respect to the treatment of women, and he does not share an intention with the other members of the group to perpetrate acts of sexual violence on women and girls. Thus, whether or not he participates in these acts, the fact that he does not share an intention with respect to acts of sexual violence may place him outside of the we-mode analysis for purposes of these situations. When an individual’s intention does not closely approximate the group’s intention or ideology, it should be considered within the I-mode. This doesn’t mean he should avoid responsibility for any direct or indirect support of these actions (an issue I will address in later chapters), but it does mean we might consider him to be an individual actor instead of part of the group agent, perhaps with respect to actions like preparing food for IS fighters, or providing transportation assistance.

Similarly, the I-mode can help us think about the agency of a nonvoluntary or involuntary member of IS, such as someone who has been coerced into joining IS, or who has been captured, forced to convert, and forced to join the group. At some point, the relationships between the individuals who constitute the group may change, and the nonvoluntary or involuntary group member may turn into a voluntary group member through the development of group-based intentions. Prior to this happening, a nonvoluntary or involuntary IS member could already be participating in the collective action of the group, yet it would be in the capacity of an individual rather than as a joint actor. A group member who does not share the group intention could be participating in the same actions as other group members, yet for personal reasons like self-preservation or preservation of one's family. In practice, it will be hard to distinguish between group and individual intentions, but assuming we know an individual's mental states, we can distinguish between a full group devotee and one with either reservations or personal interests. We need to be able to capture these individuals as part of the collective, and participants in the joint scheme (rather than clear defectors/non-group members), but we must also be able to distinguish their intentions and actions from those of the group agent. I-mode allows us to consider these marginal IS group members.

2.6.B Victims

Most of the foregoing discussion is related to joint action and joint intention, neither of which are likely to be relevant when we are thinking about a victim group. Instead, an analysis of a victim group is more focused on wrongs perpetrated against the individual victims, and the corresponding victim group, and requires us to find something about the victims that plays a causal role in the actions of the perpetrators. The group identity of victim groups (race, gender, religion, etc., or some combination) usually exists prior to the group

becoming a victim group, thus victims are not making a choice to be part of a targeted group. The Yazidi women and girls have been targeted by IS based on their ethnic/religious identity and their sex. The main issue, then, is how to understand what it means to be a member of a group being harmed as part of a campaign of mass violence.

Tuomela's view is about looking at individuals who are part of a group with group intentionality, while a victim group does not constitute itself through the intentions of its members. Yet the distinction between I-mode and we-mode also provides significant resources when we try to think about what it means to be an individual who is part of a victim group. With victims, the general framework can be used in a broader set of circumstances, to provide reasons for the actions of individuals in one group, and then using that evaluation to define a second group. Thus we use the I-mode and we-mode to analyze the actions of individual and group perpetrators to explain the group-level phenomenon of perpetrating harms on a second group. In the case of IS and the Yazidis, there are various opportunities for perpetrating harm, and individuals may act as individuals, or as group members, or both, depending on the specific action taken. It is the participation of individuals in the group scheme that defines the victim group, and this is less concerned with the intention behind any one action taken by an individual group member. The I-mode also allows us to focus on the individuals who are harmed by a perpetrator group, as they have been wronged in their capacity as individuals. There may also be harms that are done to the victim group, especially if the victim group already shares some other group identity, such as the Yazidi women and girls who shared an ethnic and religious identity prior to their victimization.

We might even say that the harms experienced by the victim group, as a group, cannot be reduced to the individual harms experienced by the individuals without a remainder. But

the direction of our focus should not begin at the group level. Some part of the individuals' experiences as part of the victim group will be shared or similar, such as the specific harms perpetrated. Yet other parts of Yazidi victim experiences will be unique, given their individual circumstances of enslavement and their phenomenological experiences of the sexual violence. The individuals who are harmed are harmed by the wrong actions of individuals, despite the fact that their status as victims is largely determined by the perpetrator group's intention. The point of talking about group harms cannot be to make the individual group members invisible, and thus we cannot think about group harm solely in terms of its aggregative effect. Thus the I-mode and we-mode provides the resources to consider both sites of the harms to the Yazidi women and girls. The I-mode also allows us to account for individuals who do not see themselves as part of a victim group, or individuals who don't see themselves as individual victims, although they acknowledge their status as a member of a victim group, or as a member of a group that existed prior to victimization.

This chapter aimed at establishing a framework for how we should think about individuals and groups. I explored the main collectivist, individualist, and hybrid views of the status of groups and their members, considering how the views differ with respect to relationality, identification, and intention. I argued that we should adopt a hybrid view because it provides more resources than the other two sets of views. I found Tuomela's I-mode and we-mode concepts to be particularly useful for understanding perpetrator groups and victim groups. In the next chapter, I will take up the issues of mass sexual violence introduced in the last section, and I will explore the concepts of wrong and harm more fully with respect to perpetrators, victims, and sexual slavery.

CHAPTER III – THE HARM OF SEXUAL SLAVERY

Thus far I have presented the problem of sexual enslavement of Yazidi women and girls by members of IS, and defended a hybrid account of groups that allows us to recognize both the social and individual aspects of perpetrator and victim groups. In this chapter, I analyze sexual slavery as a harm and as a wrong, relying on the metaphysical analysis of the previous chapter to understand the phenomenon. This is a crucial step in understanding why we should care about preventing, interrupting, and punishing mass sexual enslavement, and how we should go about addressing the problem with respect to victims and perpetrators, as groups and as individuals.

I begin with an introduction to sexual violence in war, using Hugo Grotius to explore our intuition that this practice is unacceptable and warrants intervention. While he provides a novel and compelling account of justified military intervention for his time, Grotius holds an antiquated view of women, so I go on to construct a more plausible account of what could underpin these intuitions. I distinguish between harm and wrongdoing before giving an account of harm that acknowledges both subjective and objective interests. I then apply this account to the sexual slavery of individuals and groups. Finally, I distinguish the particular adverse consequences of sexual slavery from the wrong of perpetrating sexual slavery, and I claim that the wrongfulness of the action should be seen objectively, regardless of the subjective experience of the victims. Throughout, I use the illustrative case of the Yazidi women and girls to motivate and develop my account, though it is of wider applicability, including by exploring the way that IS has attempted to use Islam to justify their actions as not-wrongful, and some of the ways religion and society can play a role in the harm of sexual slavery.

3.1 Preventing Sexual Violence in War

Sexual violence is manifested as both a symptom of war and a tool of war.¹ Although the customs of war officially prohibited rape, historically the prohibition was rarely enforced. Rape has been used by men on the conquering side of a battle as a “means of expressing the totality of victory.”² It has been used as an expression of power and ownership over the defeated side. When the defeated side gains power, rape is then used to retaliate against the former victors.³

The ignorance or tolerance of rape by military commanders has been explained by the belief that sexual violence before a battle increased their soldiers' aggression and desire to win, while rape after a battle was a well-deserved reward, a chance to release tensions and relax.⁴ Particularly during World War II, women were forced into military brothels of sorts, such as the sex camps created by the Japanese of Koreans held as “comfort women.”⁵ These comfort women and other military brothels were used to keep troop morale high, a goal of individual men and also of commanders seeking military victory. Rape has also been used as a tool of genocide to systematically destroy a population. As noted in the Introduction, acts of rape can constitute genocide when they are intended to result in the destruction of a group and involve one or more of the following: “(b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about

¹ Laurel Fletcher, Allyn Taylor, and Joan Fitzpatrick, “Human Rights Violations against Women,” *Whittier Law Review* 15 (1994): 320.

² Tamara L. Tompkins, “Prosecuting Rape as a War Crime: Speaking the Unspeakable,” *Notre Dame Law Review* 70 (1994): 859.

³ *Ibid.*, 862.

⁴ Kelly D. Askin, “Prosecuting Wartime Rape and Other Gender-Related Crimes under International Law: Extraordinary Advances, Enduring Obstacles,” *Berkeley Journal of International Law* 21 (2003): 296.

⁵ Tompkins, “Prosecuting Rape as a War Crime,” 864.

its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group.”⁶

While widespread sexual violence in conflict zones is not a new phenomenon, the attitude toward such atrocities is changing to recognize the gravity of the situations. It may seem impractical to look back to the seventeenth century for guidance as to whether mass sexual violence could constitute a just cause for war. But Grotius is a good place to start when we try to examine the theoretical underpinnings of mass sexual violence and war. His general position is appealing and still undergirds many debates about self-defense and just war today.

3.1.A Grotius and Identifying Harm⁷

In *De Jure Belli ac Pacis*, Hugo Grotius maintains that death and injury-to-chastity⁸ are the two threatened harms to individuals that give one a right to kill. He says that “no private person is permitted to kill another, except in defence of that which, if once lost, is irreparable, as Life and Chastity.”⁹ Grotius does not give us an account of what he means, specifically, by the term *chastity*. As the Latin origin means *morally pure*, it should best be understood as the state of refraining from morally impure acts of sex, or extramarital acts of sex. I read him to include protection of all women, both virgins and married women, from rape, as he uses the terms “Virgin-Chastity” and “conjugal Fidelity” to refer to the two aspects of chastity worthy of protecting. Therefore, I interpret “injury to chastity” to imply sexual acts that are not voluntary on the part of a woman, her marital status notwithstanding.

⁶ U.N. General Assembly, *Convention on the Prevention and Punishment of the Crime of Genocide*, 9 December 1948, art. II.

⁷ Grotius does not make a distinction between harm and wrong. I will, in Section 3.2.

⁸ I see this “injury-to-chastity” to correspond with sexual violence, as I assume that Grotius was not referring to instances in which a woman chose to “damage” her chastity of her own accord as instances in which she would be entitled to kill in self-defense. But I will use his terminology instead of utilizing the terms “sexual violence” or “rape.”

⁹ Hugo Grotius, *De Jure Belli ac Pacis* [The Rights of War and Peace] (1625), trans. Richard Tuck, (Indianapolis, Ind.: Liberty Fund, 2005), 413.

Grotius does not give an explanation of why death constitutes a harm that is serious enough to justify killing the person threatening the harm, although he appears to be focused on proportionality, only risking the same harm in the defense as in the threat. I will pursue a more robust justification. Natural law, for Grotius, permits killing to prevent a threatened injury, even when killing would be disproportionate, because he sees certain injuries as akin to death. He says there are “some Things which we prize equally with our Lives; as Reputation, Virgin-Chastity, conjugal Fidelity.”¹⁰ Grotius does not permit defense of reputation¹¹ via killing,¹² but he does permit killing in defense of chastity. It seems that Grotius presents life and chastity as uniquely worthy of protecting because, as he quotes Maimonides, they are of a species of harms “which, if once lost, is irreparable.”¹³ It will be important, then, to determine who suffers the irreparable harm in the event of rape.

There are at least two options for considering what Grotius sees as the harm of injury-to-chastity that could justify killing. First, he might see the injury-to-chastity as injury to the honor or property of men. Grotius claims that husbands have a right over their wives, arising from consent, by virtue of their marriage.¹⁴ He says that “because of the Difference of Sex, the Authority is not equal; the Husband is the Head of the Wife in all conjugal and family

¹⁰ Ibid., 885.

¹¹ Recall from the Introduction that there are two ways to think about honor or reputation: either as something inherent in an individual that is tied to character, virtue, and integrity, or as something that is tied to status and reputation. The latter definition, with its focus on reputation, is tied to an individual’s ability to command a certain kind of treatment from others. See Joseph O. Vandello and Dov Cohen, “Male Honor and Female Fidelity: Implicit Cultural Scripts That Perpetuate Domestic Violence,” *Journal of Personality and Social Psychology* 84, no. 5 (2003): 998; see also Richard E. Nisbett and Dov Cohen, *Culture of Honor: The Psychology of Violence in the South* (Boulder, CO: Westview Press, 1996).

¹² See *De Jure Belli ac Pacis*, 193: “There are those who assert, that a Man may lawfully kill such Persons too; but this is not only extreme false, but highly repugnant to the Laws of Nature; for such an Action is no proper Means of preserving one’s Character.”

¹³ Ibid., 407.

¹⁴ Ibid., 413.

Affairs.”¹⁵ So we might think that injury-to-chastity causes harm to the property of a man – except it is unclear if the marriage makes the woman the property of her husband. Grotius also says that the religious laws “not only give[] the Husband Power over the Wife’s Body, which in the State of Nature also was allowed him . . . but also grants the Wife reciprocally a Power over the Husband’s Body.” Perhaps the harm could also be located in the reputation of the husband, especially if it damaged his ability to command the deferential treatment of others. But as already noted, harm to reputation does not justify killing.

However, a more plausible interpretation is this: Grotius sees the injury-to-chastity as a direct bodily injury to the female victim of such an act, and as an injury to the property of the men. Grotius refers to Heliodorus’s record of a woman who vindicated her own chastity, which is called a “*just Defence of her injured Honour*.”¹⁶ This appears to be an indication that Grotius sees the injury as located in a woman rather than the man, even if the injury is to her honor rather than her body. However, we know that injury to honor or reputation, for Grotius, is not sufficient to justify killing. Therefore, he could see the physical injury to a woman as sufficient to justify killing a would-be aggressor, or he could see the two sites of injury as jointly sufficient to justify killing a would-be aggressor, or it may be overdetermined.

Given the above quote about reciprocal power over marital bodies, the harm of injury-to-chastity could constitute property damage to the husband, but only if a loss to the husband constitutes a loss of some kind to the wife. It seems that Grotius seems much more willing to draw parallels between death and bodily harm than death and loss of property. Yet it remains unclear whether Grotius locates the harm of injury-to-chastity in a woman’s body, as her body, or in the injury to a woman’s body as the property of a husband, or both.

¹⁵ Ibid., 513.

¹⁶ Ibid., 514.

A final note about Grotius and his account of defending chastity on a large scale: he does not clearly condemn the practice of rape during war. He says:

The Ravishing of Women is sometimes permitted in War, and sometimes not. They that permit it, respect only the Injury done to the Body of an Enemy, which by the Law of Arms they think should be subject to all Acts of Hostility. But others, with more Reason, look not to that Injury alone, but also to the Act of Brutality, which being neither necessary for the Security of those who commit it, nor proper for the Punishment of those against whom it is committed, should be as much punished in War as in Peace...¹⁷

This account is strange. It appears to locate the legal harm of mass injury-to-chastity in the “Body of an Enemy,” which sounds like the bodies of the male combatants, or in both the bodies of the male combatants and in the bodies of the injured female noncombatants. However, it seems clear that he finds the practices morally condemnatory and in need of legal revision. He follows his initial statement with the claim that “this should be observed ... not only as a Part of military Discipline, but as a Part of the Law of Nations, viz. that whosoever ravishes a Woman, tho’ in Time of War, deserves to be punished in every Country.”¹⁸

3.1.B Grotius and Preventing Harm

Recall that Grotius sees defense of life and defense of chastity as two clear justifications for defensive killing. We have a right to protect our lives and our bodies. Accordingly, if one aims to contravene these rights, we are permitted to stop them. Grotius says this right of self-defense “arises directly and immediately from the Care of our own Preservation, which *Nature* recommends to every one,”¹⁹ not from the wrong of the attacker. We are justified in killing an attacker, for Grotius, purely as a consequence of the attacked individual’s actions to ensure self-preservation. We can refer to this as a *rights-based*

¹⁷ Ibid., 1151.

¹⁸ Ibid., 1300.

¹⁹ Ibid., 397.

*account*²⁰ of self-defense. The intentions of the attacker, whether good or mistaken, and whether personal or as a soldier following orders, do not affect the attacked individual's right to self-defense. Grotius says that "it is sufficient that I am not obliged to suffer the Wrong he threatens to do me,"²¹ locating the right to kill one's attacker solely within the right of self-preservation.

The rights-based account is not subject to justifications on the part of the attacker that may reduce or dissolve his liability to be killed. Grotius notes that it is a matter of dispute as to whether "an innocent Person, who happens to be in our Way, and hinders that *Defence* or *Escape* that is absolutely necessary for the *Preservation* of our Lives, may be run through, or crushed in Pieces."²² The only reason one should avoid killing an innocent threat would be due to charity, not moral obligation.²³ Rather, he finds that "we are commanded in the Gospel to love our Neighbours as ourselves, not before ourselves; nay, when an equal Danger threatens us, we are not forbid to take Care of ourselves before others."²⁴ Grotius sees killing in self-defense not as intentional killing, but rather as a lawful action taken as "the only Means left to preserve *our selves*, and not as the *principal* End proposed."²⁵ The danger must

²⁰ I use McMahan's distinctions of the three main accounts of the basis of moral liability to defensive killing. See Jeff McMahan, "The Basis of Moral Liability to Defensive Killing," *Philosophical Issues* 15, no. 1 (2005).

²¹ *De Jure Belli ac Pacis*, 397.

²² *Ibid.*, 398.

²³ *Ibid.*

²⁴ *Ibid.*, 243-44. Thomson and Uniacke take up the rights-based account of liability to be killed in self-defense. For them, "the violation of a right is a matter of what one person causes to happen to another." McMahan, 389. The culpability, responsibility, or agency of the person who poses a lethal threat does not matter for establishing the right to kill in self-defense; rather, both the innocent and the non-responsible can violate rights under this account. *Ibid.* See also Judith Jarvis Thomson, "Self-Defense," *Philosophy & Public Affairs* 20, no. 4 (1991); Suzanne Uniacke, *Permissible Killing: The Self-Defence Justification of Homicide* (Cambridge: Cambridge University Press, 1994).

²⁵ *De Jure Belli ac Pacis*, 398.

be both imminent and immediate, and cannot be based solely on fear.²⁶ Acting in self-defense must be necessary and proportionate, based on reasonable anticipation of danger.²⁷

Grotius does not specifically discuss the right to kill one who threatens injury-to-chastity. But given his discussion of what gives one the right to kill in defense of life, it can be assumed that he holds a similar rights-based account of the right to kill in defense of chastity. If the harm is located in the physical damage to a woman, then she (or a third-party defending her, as an innocent person) has a right to do whatever she needs to do to avoid the damage, regardless of the intentions of the assailant.²⁸

The “irreplaceability” aspect of chastity appears to be Grotius’ only claim about necessity in defending chastity. What Grotius thinks is irreplaceable seems like a combination of the honor and the physical purity of a woman – again, he references the “*just Defence of [a woman’s] injured Honour,*”²⁹ but since defense of honor³⁰ cannot justify killing, it can only overdetermine the harm of injury-to-chastity, as injury to a woman’s body. But Grotius does not specifically address the necessity of protecting a woman from injury-to-chastity. So we must assume that he sees killing in defense of chastity as a last resort, which could require attempted use of non-lethal means of preventing an assault prior to killing.

While I share Grotius’ intuition that sexual violence is a serious harm, I disagree with both his account of what makes sexual violence (or the loss of chastity) harmful or wrong, and his account of justified self- (or other-) defense. The rest of this chapter aims at constructing a

²⁶ Ibid., 389-99.

²⁷ Ibid., 398, 401.

²⁸ Assuming that the proportionality analysis in the previous section holds for defense of chastity. If it does not, then she is barred from killing in self-defense because the response would be disproportionate to the threatened harm.

²⁹ *De Jure Belli ac Pacis*, 414.

³⁰ If it could, then my earlier qualification limiting the discussion to cases of coerced sex might be less plausible. But instead, as I argue, (i) only loss of chastity through rape could possibly be analogous to loss of life and (ii) defense of honor, alone, cannot justify killing.

more plausible account of the harm and wrong of a particular kind of sexual violence: mass sexual slavery.

3.2 An Account of Harm

In this section, I offer an account of harm, first distinguishing between harm and wrongdoing, which is the subject of the next section, before surveying the most compelling theories of harm. I endorse a well-being theory of harm and a preference theory of well-being for individuals. I close this section by considering the difference between individual and group-based harms, and endorse an objective list theory of well-being for groups.

3.2.A Harm and Wrongdoing

Before we can analyze the concept of ‘harm’, we must be able to distinguish it from the concept of ‘wrong’ or ‘wrongdoing’. We could actually distinguish between wrongs, harms, and wrongful harms, since there are harms that do not result from wrongful conduct, and there are wrongs that do not result in harm.³¹ Joel Feinberg offers one compelling account of harm and wrongdoing, in which he identifies two relevant senses of “harm.” The first involves a setback to interests, and the second involves one person wronging another person.³² A setback to interests need not have been caused by intentional human action, and could instead be the result of weather or an accident. We would say that a painful, broken leg caused by weather or an accident was a harm, but we wouldn’t attribute it to another person’s wrongdoing.

The second sense of “harm” involves wrongdoing. A painful, broken leg that results from intentional tripping would be a setback to interests that involves wrongdoing. Notice that harm does not have to result from wrongdoing, such as where I intentionally trip someone, and instead of breaking her leg she bumps into a stranger and they fall in love. But since our aim is to answer

³¹ See Derek Parfit, *Reasons and Persons* (Oxford: Clarendon Press, 1984), chapter 15. Parfit argues that it is possible for one to act wrongfully without negatively impacting the interests of an identifiable person.

³² Joel Feinberg, *Harm to Others* (Oxford: Oxford University Press, 1984), 31-36.

questions about harms where we can identify an entity that is at least partially culpable with respect to the harm, or acts that society could legitimately criminalize,³³ and where some kind of setback to interest occurs, I will use Feinberg's definition of harm because it captures both the result and the wrongful action.

In accordance with the harm principle, Feinberg sets up the following as the conditions under which Person A (A) *harms* Person B (B):

- (1) A acts (perhaps in a sense of "act" broad enough to include acts of omission [...])
- (2) in a manner which is defective or faulty with respect to the risks it creates to B, that is, with the intention of producing the consequences for B that follow, or similarly adverse ones, or with negligence or recklessness in respect to those consequences,
- (3) A's acting in that manner is morally indefensible, that is, neither excusable nor justifiable; and
- (4) A's action is the cause of a setback to B's interests, which is also
- (5) a violation of B's right.³⁴

The harm aspect of this definition is found in condition 4.³⁵ Thus, a harm is (1) a wrongful act that (2) sets back or invades the interest of another person.³⁶ These interests can be either (1) well-being interests or (2) rights-based interests,³⁷ as I consider in the next sub-section, in which I depart from Feinberg by taking up well-being interests rather than right-based interests as the best way to understand harm.

Wrongdoing, or the wrongfulness aspect of harm, is captured by conditions 1, 2, 3, and 5 of Feinberg's definition. It is based on one's moral or legal culpability for an action. A person

³³ J.S. Mill notably argues for the Harm Principle, which claims that "the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others." John Stuart Mill, *On Liberty* (1859), eds. David Bromwich and George Kateb (New Haven: Yale University Press, 2003), 80. See also Feinberg, *Harm to Others*, 3.

³⁴ Feinberg, *Harm to Others*, 105-06.

³⁵ *Ibid.*, 106.

³⁶ Parfit, *Reasons and Persons*, chapter 15.

³⁷ Feinberg, *Harm to Others*, 34-35.

can be said to wrong another person “when he treats him unjustly,”³⁸ where the injustice consists of the morally indefensible actions taken under conditions 2 and 5 above. I return to the concept of wrongfulness in Section 3.4.

3.2.B Harm and Interests

According to Feinberg’s definition, harm is understood in terms of setbacks to interests, so the first step in analyzing harm will be to explore the different kinds of interests that could be harmed. I consider rights-based interests and well-being interests in turn.

3.2.B.i Rights-Based Interests

A rights-based account of harm explains harm by identifying the rights one possesses, either naturally or via convention, and establishing that a harm has occurred when one of those rights has been violated. For instance, a proponent of the rights-based account would claim that “[i]f B has a right not to be fondled without her consent, then A’s nonconsensual fondling sets back B’s rights-based interest in her bodily integrity, even though he does not harm B in any other way,” i.e. her well-being is not affected.³⁹ Grotius offers a rights-based account of harm, and a corresponding rights-based account of self-defense.

However, it seems that rights-based interests cannot be identified without appealing to well-being. The reason why we might be justified in acting in self-defense is not simply based on the narrow view that we have inviolable rights, but rather that what we see as impermissible actions are grounded in our preferences related to our well-being. So whether or not there is a plausible rights-based account that identifies rights in terms of their likely impact on well-being, we must look at well-being interests to develop a robust account of harm.

³⁸ Ibid., 107.

³⁹ Alan Wertheimer, *Consent to Sexual Relations* (Cambridge: Cambridge University Press, 2003), 93; see also Feinberg, *Harm to Others*, 107.

3.2.B.ii Well-Being Interests

An alternative account of harm looks at harm to well-being interests. Welfare interests include interests in “the continuance for a foreseeable interval of one’s life,”⁴⁰ as well as “health, adequate intellectual capacity, the absence of absorbing pain, and emotional stability.”⁴¹ These interests are “those general all-purpose interests” that must be satisfied for an individual to pursue her “particular goals and aims.”⁴² Thus the concept of well-being interests can be seen as universal, whether or not we subscribe to an objective understanding of which interests count as well-being interests. It is clear, however, that harm to welfare interests will have an impact on “the whole network of [an individual’s] interests,” since they are prior to the fulfillment of “more ultimate aspirations.”⁴³

If we look at the above case of nonconsensual fondling from the perspective of well-being interests, the list of interests we care about could either be subjective or objective. On a subjective list account of well-being interests, if B does not identify or experience a harm that has occurred as a result of the fondling, we would say that B’s subjective interests have not been harmed. However, on an objective list account of well-being, B’s interest in autonomy and bodily integrity have been negatively affected, and therefore her well-being has been negatively affected as well. I look more closely at these theories of well-being in the following sub-section.

⁴⁰ Feinberg, *Harm to Others*, 37.

⁴¹ Wertheimer, *Consent to Sexual Relations*, 94.

⁴² Ibid. See also Feinberg, *Harm to Others*, 37.

⁴³ Ibid., 37.

3.2.C Harm and Well-Being

There are three main theories about assessing the quality of a person's life: mental state views, preference-based views, and objective list views.⁴⁴ Mental state theories "hold that the quality of a life for the person who lives it is determined completely by [...] its experiential quality,"⁴⁵ and since experience is largely subjective, these theories broadly focus on self-evaluation of how a life is going. Only something that has an effect on the "quality of one's experience" counts as a contributor to well-being.⁴⁶ This branch of theories often focuses on the mental states of pleasure or happiness,⁴⁷ where harm to well-being consists in the introduction of pain or unhappiness, but mental states other than happiness can be captured by these sorts of theories, such as life satisfaction or a more general emotional well-being.⁴⁸ Yet happiness-based theories, or hedonism, boasts several attractive features. It is a straightforward way of looking at what it means for a life to go well, since pleasure and the absence of suffering is a simple way of answering this question. As Daniel Haybron illustrates, when we think of what makes intense nausea bad, we are focused on what it *feels* like, as the "badness appears to be brutally phenomenological, residing in the quality of the experience itself."⁴⁹ Self-evaluation of one's emotional state or life satisfaction will be similarly focused on how one feels.

⁴⁴ Judith Jarvis Thomson, *The Realm of Rights* (Cambridge, Mass.: Harvard University Press, 1990), 205; Wertheimer, *Consent to Sexual Relations*, 94-95; Thomas Scanlon, "The Status of Well-Being," in *Tanner Lectures on Human Values*, ed. Grethe B. Peterson (Salt Lake City, UT: University of Utah Press, 1998), 99; Derek Parfit, "What Makes Someone's Life Go Best?," in *Ethical Theory: An Anthology*, ed. Russ Shafer-Landau (Oxford: John Wiley & Sons, Inc., 2013); Thomas Scanlon, *What We Owe to Each Other* (Cambridge, MA: Harvard University Press, 1998).

⁴⁵ Scanlon, *What We Owe to Each Other*, 113.

⁴⁶ Ibid.

⁴⁷ Parfit, *Reasons and Persons*, 493.

⁴⁸ Daniel M. Haybron, "Mental State Approaches to Well-Being," in *The Oxford Handbook of Well-Being and Public Policy*, eds. Matthew D. Adler and Marc Fleurbaey (Oxford: Oxford University Press, 2016), 347.

⁴⁹ Ibid., 354.

But what makes these views straightforward is arguably what makes them weak: they are too simplistic. As demonstrated by Nozick's experience machine thought experiment,⁵⁰ most people think about their own welfare as having "more than just positive states of mind."⁵¹ Applying this to the view we have already seen from Grotius, it fails to capture everything we might think is wrong with the loss of life and chastity. It can account for any suffering that might occur prior to death or the loss of chastity, the fact that one no longer experiences *any* mental states after death (as far as I know), and the fact that one can no longer have the experience of knowing one is chaste after it has been taken away. But mental state theories cannot account for other aspects of harm. One does not "experience" death, as one only experiences (at most) whatever leads up to death. And would we want to say that someone who has been raped has not been harmed if she was unconscious at the time and never learned of the event? Some might, but I would disagree with a view that cannot account for a way in which an individual who does not "experience" the feeling of being sexually violated could still have been harmed.

Preference-based theories hold that the quality of a person's life is a matter of the extent to which that person's preferences or desires are satisfied."⁵² These views claim that the "quality of a person's life depends (in part) on whether one's actual subjective desires are fulfilled, but it does not require that one actually *experience* the fulfillment of the desire."⁵³ Preference-based theories differ from experiential theories in that they appeal to more than just the "present features of our lives that are introspectively discernible."⁵⁴ Rather, they appeal to all preferences one might have about her life, and are tied to the correspondence

⁵⁰ Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), 42.

⁵¹ Haybron, "Mental State Approaches to Well-Being," 355.

⁵² Scanlon, *What We Owe to Each Other*, 113.

⁵³ Wertheimer, *Consent to Sexual Relations*, 94-95.

⁵⁴ Parfit, "What Makes Someone's Life Go Best?," 294.

between these preferences and actual states of affairs.⁵⁵ There are several different versions of preference-based theories, with different requirements for what constitute suitable desires. Some views look straightforwardly at the satisfaction of current desires, while others look at the overall satisfaction of desires over a lifetime. Still others require that desires be informed in some way, so as to avoid the criticism that some people lack the information necessary to “properly” formulate desires. On any of these views, “[y]our well-being has to do with what is in your self-interest,”⁵⁶ and this is hard to argue with on its face. These views appear to be necessarily tied to reality in a way that mental state views are not, yet they still account for the subjective preferences of an individual in analyzing her well-being. The harm of death or rape to someone who prefers to stay alive and prefers to stay celibate is easily captured by these views.

Yet the difference between the distinctive preference-based views reveals a challenge for these views. Either we want to give full deference to someone’s expressed desires, or we want to couch these desires in some way. If we opt for the first view, we may accept certain preferences that have been somehow limited due to the particular circumstances of one’s upbringing, especially involving limited access to information. Yet if we take the other route, and require that desires must be “informed,” we seem to be veering into objective territory in which someone’s true preferences might not meet the standard for counting as preferences, based on what the preferences are, or what went into their formation. An individual’s desire to remain chaste, for instance, should not necessarily be discounted simply because she believes that she will be immediately struck down by lightning if her chastity is lost.

⁵⁵ Ibid.

⁵⁶ Krister Bykvist, “Preference-Based Views of Well-Being,” in *The Oxford Handbook of Well-Being and Public Policy*, eds. Matthew D. Adler and Marc Fleurbaey (Oxford: Oxford University Press, 2016), 330.

Objective theories assert that “certain things are good or bad for people, whether or not these people would want to have the good things, or to avoid the bad things.”⁵⁷ On these accounts, there are “standards for assessing the quality of a life that are not entirely dependent on the desires of the person whose life it is.”⁵⁸ Rather, for example, “knowledge, achievement, and moral virtue can be good in your life and their absence bad even if you’re not in fact attracted to them,”⁵⁹ and thus they count toward your well-being. Harm consists of denial of these objective goods, whether or not an individual experiences the denial as harm or has a preference for these particular goods. This has the benefit of permitting external assessment of well-being, and can allow for the institutional provision of resources in order to achieve well-being.

It might be the case that most would agree on at least some objective features of well-being, such as those listed above. But that claim seems to be tied to our preferences – if we tried to come up with a list of objective goods, we would only want to include those things for which we have a preference. Otherwise we would have a hard time accepting that the good is objectively “good.” And this arguably causes objective list theories to collapse into preference-based theories. Denial of life or chastity would likely be captured as an objective harm under nearly any objective list we could imagine, although it is not in Hurka’s list (inspired by Aristotle) as noted above.

At the level of the individual, the harm of sexual slavery will not look good no matter which conception of well-being we adopt. But the most compelling of these three accounts, when assessing harm to the individual, is the preference-based set of views. The experiential view is too limiting, in that someone’s life can go well as long as they are oblivious to certain pains or

⁵⁷ Parfit, “What Makes Someone’s Life Go Best?,” 296.

⁵⁸ Scanlon, *What We Owe to Each Other*, 113.

⁵⁹ Thomas Hurka, “Objective Goods,” in *The Oxford Handbook of Well-Being and Public Policy*, eds. Matthew D. Adler and Marc Fleurbaey (Oxford: Oxford University Press, 2016), 380.

wrongdoings. The objective list views are also too limiting, in that they determine what will contribute to the well-being of individuals without taking into account their own view of what will make their lives go best, and what will not detract from it. Individuals should be able to identify their own preferences, and be understood to be doing well, or to be harmed, based on the satisfaction of these preferences.

The preference-based views might look like a problem for application of the harm principle. If goods are whatever individuals (or even groups!) desire, and harms are what they desire to avoid, then it may be hard to identify a wrongful action as a harm. If condition 4 is purely subjective, and “B’s interests” can be based on anything B desires (or does not desire), then it may be a challenge to assess the other conditions based on what B sees as her interests. This would make it challenging to justify the criminalization of behavior, if everyone had idiosyncratic desires. Yet this assumes that there is no way to generalize about individuals’ preferences. While we would not want to claim that an particular individual has necessarily experienced a particular harm, or preferred to avoid that harm, we can make generalizations about the sorts of harms that individuals prefer to avoid when we identify what sorts of harms should be criminalized by a society, and in the next sub-section I argue that we should.

3.2.D Group-Based Harms

The preceding account is persuasive if we think about harms to individual persons. But reliance on the subjective preferences in order to determine well-being is less plausible if we try to think about harming a group. As I argued in Chapter Two, we need to be able to capture both the collective and individual aspects of a group, and acknowledge the shared and differing experiences. The preference-based views align with the I-mode, acknowledging the individual preferences one might have with respect to oneself as an individual and as a group

member. But the we-mode demands something beyond the aggregation of individual preferences, and the identification of a set of collective preferences seems much more challenging than the identification of a collective intention. Thus the objective list views will be more appropriate for assessing whether or not a group has been harmed through a setback to their collective interests. Since individuals will have a variety of preferences as to how they see their lives going best, adopting and utilizing an objective list of goods that capture fundamental aspects of humanity is a better way to assess collective harm. While I do not want to suggest that there is an extensive list of goods that are objectively better (such as listening to classical music or drinking expensive wine), I would adopt an objective list that coheres with the fundamental aspects of humanity as what constitute well-being interests. That is, an objective list of well-being interests should contain those things without which it will be impossible for the group, and its individual members, to fulfill “more ultimate aspirations.”⁶⁰ These include such interests as bodily integrity, insofar as it is possible, which would capture health, safety, and sustenance. At a bare minimum, widespread and arbitrary deprivation of these interests would constitute harm to a group.⁶¹

Now that we have an account of what (minimally) counts as a setback to the interests of a group, I turn to the particular harm of sexual slavery of individuals and groups, and analyze how we should understand this as a harm.

⁶⁰ Feinberg, *Harm to Others*, 37.

⁶¹ Larry May defends an “international harm principle” which identifies the following principle of group-based harm: “To determine if harm to humanity has occurred, there will have to be one of two (and ideally both) of the following conditions met: either the individual is harmed because of that person’s group membership or other non-individualized characteristic, or the harm occurs due to the involvement of a group such as the State.” Larry May, *Crimes against Humanity: A Normative Account* (Cambridge: Cambridge University Press, 2005), 83.

3.3 Harm of Sexual Slavery

Sexual slavery in war describes the practice of enslaving women and girls for “recreational sexual service to soldiers and officers.”⁶² This practice is somewhat distinguishable from the mass rape of female noncombatants as a “weapon of war,” where the purpose of the rape is to terrorize the women and the society as a whole.⁶³ Instead, women and girls are “enslaved for sexual service in brothels for soldiers and in forced ‘marriages’ (usually to officers who may select a woman or girl from one of the brothels or from a group of women or girls targeted for mass rape),”⁶⁴ and while the purpose may also include terror and humiliation, the practice is generally aimed at providing recreation and generating revenue.⁶⁵

The sexual enslavement of the Yazidi women and girls follows this familiar pattern. While the Yazidi men and boys were killed or forced to convert to Islam during the attack, many women and girls were kidnapped and deemed to be the property of IS. They were then transferred to sites in Iraq and Syria, where most were made available to IS fighters for individual purchase, and a small number were held as the “collective property of ISIS” and “distributed in groups to military bases throughout Iraq and Syria.”⁶⁶ The women and girls who were held by individual IS fighters were subjected to brutal sexual violence and beatings. When women or girls tried to escape, they were punished with gang rape or the murder of their children.⁶⁷ Many Yazidi women and girls report that they were forced to take birth

⁶² Claudia Card, *The Atrocity Paradigm: A Theory of Evil* (Oxford: Oxford University Press, 2002), 118. I focus on the practice of sexual slavery in conflict scenarios, rather than considering the more general and widespread practice of human sex trafficking.

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ See *ibid.*; see also Ariel I. Ahram, “Sexual Violence and the Making of ISIS,” *Survival* 57, no. 3 (2015): 67.

⁶⁶ “‘They Came to Destroy’: ISIS Crimes against the Yazidis,” (U.N. Human Rights Council, 15 June 2016), 12, para. 55.

⁶⁷ *Ibid.*, 14, paras. 67-68.

control by the IS fighters, while others became pregnant as a result of being raped on a regular basis.⁶⁸

While sexual slavery cannot be understood merely as a combination of two discrete aspects, sexual violence and slavery, it will nonetheless be helpful to utilize these two types of harm in order to construct an account of the harm of sexual slavery, especially in comparison with Grotius's account of injury-to-chastity. I turn to this analysis now.

3.3A Sexual Slavery of Individuals

For Grotius, the loss of chastity constitutes a harm of the same magnitude and kind as murder. As I explained in the first section, I see injury-to-chastity as plausibly corresponding with sexual violence, and here I focus on sexual enslavement as a particular kind of sexual violence, albeit one that involves other kinds of harm as well. There are plenty of accounts of sexual enslavement that could make Grotius' view of the harm of injury-to-chastity appealing as a starting point. For some enslaved individuals, the isolation from community and the lack of social existence outside of the master renders the enslaved individual "socially dead."⁶⁹ As Claudia Card explains, "[s]ocial vitality exists through relationships, contemporary and inter-generational, that create an identity that gives meaning to a life. Major loss of social vitality is a loss of identity and consequently a serious loss of meaning for one's existence."⁷⁰ For some women and girls, repeated rapes and violations are experienced as torture. Robin West describes rape as a kind of "spiritual murder."⁷¹ Some women and girls commit suicide following rape or sexual enslavement because the experience has robbed them of any interest

⁶⁸ Ibid., 15, paras. 69-70.

⁶⁹ Orlando Patterson, *Slavery and Social Death* (Cambridge, MA: Harvard University Press, 1982), 37.

⁷⁰ Claudia Card, "Genocide and Social Death," *Hypatia* 18, no. 1 (2003): 63.

⁷¹ Robin West, "Legitimizing the Illegitimate: A Comment on 'Beyond Rape'," *Columbia Law Review* 93 (1991): 1448.

in life. Still others may understand the harm of sexual slavery to include loss of honor,⁷² or something irreplaceable, as it seems Grotius would see the harm. However, we should not have to require that one have a particular experience of sexual enslavement, such as one that involves the irreplaceable loss of honor, in order to identify what is harmful or wrong about sexual slavery.

Returning to the preference satisfaction view of well-being, the quality of a person's life could depend on her desire to not have her body (or her chastity, should that be her desire) violated. So here, the harm would be located in, say, the woman's preference for bodily autonomy, regardless of whether or not there is a subjective, experiential harm she experiences. Her experience of distress does not seem to be what makes the act wrong – the act of rape is wrong irrespective of her experience because it violates her preferences. On this view, the preference for bodily integrity corresponds to a harm when that preference is not satisfied. But the harm is not the death of the body or the death of chastity, nor is it necessarily irreparable or irreplaceable. Labeling sexual assault *as* death is not something we want to do for those who do not experience sexual assault as death, and thus we don't want to inextricably tie the harm of sexual slavery with the experience. This is not to say that the experience of those who are held in sexual slavery does not matter. It is only to say that someone should not be required to experience or respond to sexual slavery in a particular way for it to be a harm. This seems like what Grotius might see as the importance of honor or reputation in considering the harm of rape. It can be experienced as akin to death by some individuals, but this is not where we should locate the threatened harm that results in liability to be killed.

⁷² While I acknowledge the fact that some direct victims of sexual slavery may experience a loss of honor, I do not consider the individual loss of the honor of secondary victims, particularly male family members or other individuals in the community. I do acknowledge that this can account for part of the group harm.

3.3.B Mass Sexual Slavery

As a group harm, it becomes even more clear why we don't want to rely on the experience of sexual enslavement as death, regardless of the particular experience of some (or even nearly all) of the individual members of the group. The we-mode requires us to establish a collective interest, and this involves establishing certain objective goods, the denial of which results in harm to the group and its individual members. When a victim group has been determined by the actions of a perpetrator group, the perpetrators are concerned with harming through the denial of objective goods. They are not focused on denying any individual victim the satisfaction of her preferences, or the experience of happiness, except insofar as these denials contribute to the terrorizing of the victim group as a collective. The focus is on the group, and thus the analysis of the harm must be tied to collective, objective interests. Returning to the case of the Yazidi women and girls, we identified them as a victim group in Chapter Two, targeted by IS based on their ethnic/religious identity (which existed prior to their capture) and their sex (which became the basis for the victim group following capture). We can think about the I-mode and the we-mode as two ways of thinking about the harms experienced by the victim group.

The I-mode captures the individual experiences of individual circumstances of enslavement and their phenomenological experiences of the sexual violence, but should be explained in terms of preference satisfaction. The experience of sexual slavery is horrific and constitutes a serious impediment to well-being for nearly all individuals, which should not be ignored. Yet as I have already argued, this should not be necessary in order to identify a harm, so I will focus on the preference-based view of individual harm. Many or most Yazidi women and girls likely desire bodily autonomy, the opportunity to live in their own community, and

the ability to make choices about their own health and lives. Those who take their religion seriously may be strongly invested in maintaining their chastity. These women and girls are seriously harmed in the setback to these well-being interests, but perhaps to varying degrees, based on their individual preferences. It seems unlikely, but other women, depending on their individual preferences, might find themselves in relatively bearable circumstances. An individual woman might have her basic preferences for food and clothing satisfied, while her objective well-being interests are being denied, and she may find her situation bearable. The perpetrator in this scenario commits a wrong, regardless of the relative satisfaction of the victim's preferences, but the I-mode can identify the harms as unique to each woman or girl.

The we-mode captures the idea that the harm to the victim group of Yazidi women and girls who are sold as sex slaves is more than just the aggregation of the harm done to each individual victim, and that the collective harm done to the group as a group must be explained in terms of an objective list of well-being interests. They have been created as a victim group based on the actions of a perpetrator group, and this perpetrator group is focused on perpetrating objective harms, or denying objective goods, to the victim group. Thus the interests that are fundamental to the ability of the victim group to fulfill its ultimate aspirations, collectively and individually, are the best way to think about collective harm. I have already touched on the individual aspirations, but we might think of the collective aspirations of this small religious community as continuing to practice their religion in their community without fear, continuing to bear and raise children with two Yazidi parents, continuing to thrive as a healthy, peaceful community. All of these collective aspirations are threatened by mass sexual slavery. This should not discount the experiences and preferences of the individual group members. But the Yazidi women and girls who have been held as

sexual slaves have been denied respect for their bodily integrity and freedom to make their own choices about their lives, and while there may be some individuals who are not set on having these interests satisfied, I would again claim that these are minimal enough to be interests of every individual. And when we think about the harm that is done when these interests are denied to an entire group of individuals, we can compare the “social death” of individuals to the destruction of an entire group’s identity, “by decimating its cultural and social bonds.”⁷³ The Yazidi women and girls who are still being held as sexual slaves are continuing to experience individual harms, and their enslavement is continuing to harm the community of Yazidis as a group. Those who have survived and escaped may also continue to experience individual harms. Group harms also continue, as the knowledge that the victims survived rape and sometimes pregnancy are likely to threaten the cultural unity and group identity of the Yazidi community,⁷⁴ since chastity is an important part of their religious codes. The collective trauma in and of itself is likely to prevent the realization of their collective aspirations of living together in peaceful communities.

I have argued that mass sexual slavery is a clear setback to interests, and thus an individual and group harm. In the next section, we can turn to the other aspect of harm under the harm principle: the wrongful nature of the act, and what follows from wrongfulness of sexual slavery.

3.4 Wrong of Sexual Slavery

I used Feinberg’s definition of harm in Section 3.2, in which he distinguishes between the wrongfulness of an act and the harmfulness of an act. I have analyzed the aspect of harm that corresponds with the setback to the victim’s interests, and I will now turn to the

⁷³ Card, *The Atrocity Paradigm: A Theory of Evil*, 126.

⁷⁴ Ibid.

conditions that correspond to wrongfulness. Because I have already established the harmfulness of sexual slavery, I go directly to the act of sexual enslavement of an individual as a way to draw out its wrongfulness.

Wrongdoing, or the wrongfulness aspect of harm, consists of four conditions. First, it is an act, or possibly an omission. Second, it is performed “in a manner which is defective or faulty with respect to the risks it creates” to another person, i.e. with intent to produce certain adverse consequences, or “with negligence or recklessness in respect to those consequences.”⁷⁵ Third, the action is morally indefensible, i.e. not saved by an excuse or justification. Fourth, it violates the rights of another person. I consider each condition in turn, with respect to sexual slavery.

3.4.A Action

Sexual enslavement involves an initial action, either capturing an individual to be held as a sex slave, purchasing an individual to be held as a sex slave, or accepting as a “gift” an individual to be held as a sex slave. The initial action is followed by repeated acts of rape or torture, combined with an ongoing denial of freedom to the individual. Particular instances of sexual enslavement may include other acts that cause setbacks to the enslaved individual, as well as omissions like a failure to provide medical care, adequate food and water, or the ability to communicate with friends or family members.

3.4.B Manner

The manner in which the acts or omissions of a perpetrator of sexual enslavement are “defective” or “reckless” is well-established. Whether we only acknowledge the minimal objective list interests, or take into account the most pressing desires of an individual on a

⁷⁵ Feinberg, *Harm to Others*, 105-06.

desire satisfaction view of interests, the denial of interests like freedom of movement and bodily autonomy clearly constitute adverse consequences. Moreover, a perpetrator would be hard-pressed to deny that these adverse consequences are reasonably foreseeable, if not guaranteed, by his actions. Thus a perpetrator who engages in sexual slavery likely has the intent to produce the adverse consequences. We could imagine a member of IS who does not possess the intent, yet still engages in sexual enslavement or contributes to its fulfillment. I will consider this “marginal” member of IS in the later chapter on moral responsibility. Yet even this person acts recklessly or negligently, with respect to the adverse consequences, given that the range of possible outcomes of sexual slavery is limited.

3.4.C Moral Indefensibility

Feinberg uses the concept of moral indefensibility to refer to “actions and omissions that have no adequate justification or excuse.”⁷⁶ A justification changes the status of an act itself, so that an act that was otherwise impermissible or wrong (like raping or enslaving) becomes a permissible act. An excuse, however, does not change the status of the act. The act is still wrong, but the person acting is considered “not blameworthy” for the act. I consider potential justifications here, but I will not consider the possibility of an excused perpetrator, as a “marginal” member of IS, until later chapters. I look at war and religion as two familiar justifications for sexual slavery. If either justification succeeds, the practice would not constitute a wrongdoing.

3.4.C.i War

As I noted in Section 3.1, rape was historically seen as a permissible feature of war, as a reward for a battle won, or as a consolation for a battle lost. The sex camps that existed in

⁷⁶ Ibid., 108.

Japan during WWII are a recent example of women being sexually enslaved for the purpose of buttressing troop morale. Yet this particular practice has been met with almost universal condemnation in recent years,⁷⁷ and the norms against sexual slavery as a permissible practice in war have solidified. International criminal courts and tribunals have also criminalized sexual slavery.⁷⁸ So IS fighters will be met with two challenges if they try to justify the practice of sexual slavery as a permissible practice during war. First, it is not clear that their invasion of the Sinjar province and destruction of the Yazidi people's community constitutes a "war" as we might traditionally think of a war. But regardless, the second problem is insurmountable, and that is that there are both empirical and normative reasons to challenge any claim that the practice is acceptable. First, the practice of sexual slavery is no longer a widely accepted practice as a way to entertain fighters. The norms that were in place during previous conflicts no longer exist to support the idea of using women as the spoils or rewards of war. But second, and more importantly, sexual slavery is wrong no matter how many people support it. The involuntary use of women's bodies to entertain soldiers or to terrorize the women's communities is not acceptable at any time, whether during wartime or not, whether purportedly permitted by a religious text or not, whether it has historical precedent or not. Thus the argument I explore next, that IS is morally justified in engaging in sexual enslavement based on their religion, fails because sexual slavery is universally morally wrong.

⁷⁷ Etsuro Totsuka, "Commentary on a Victory for Comfort Women: Japan's Judicial Recognition of Military Sexual Slavery," *Pacific Rim Law and Policy Journal* 8 (1999).

⁷⁸ See U.N. General Assembly, *Rome Statute of the International Criminal Court (last amended 2010)*, 17 July 1998, art. 7(1)(g); U.N. Security Council, *Statute of the International Criminal Tribunal for the Former Yugoslavia (as amended on 17 May 2002)*, 25 May 1993, art. 5(g); U.N. Security Council, *Statute of the International Criminal Tribunal for Rwanda (as last amended on 13 October 2006)*, 8 November 1994, art. 3(g).

3.4.C.ii Religion

The other tactic for trying to justify the practice of sexual slavery is to establish that the correct source of morality does not condemn the practice. Religion, as a source of morality, has been used by IS to defend the practice. IS now has a complex bureaucracy supporting the institution of sex slavery, “including sales contracts notarized by the [IS]-run Islamic courts.”⁷⁹ The group has used the Quran to create a religious doctrine that allows IS to recruit conservative Muslim men who come from communities where casual sex and dating are impermissible. The leaders of IS have “emphasized a narrow and selective reading of the Quran and other religious rulings to not only justify violence, but also to elevate and celebrate each sexual assault as spiritually beneficial, even virtuous.”⁸⁰ Yazidi girls who have escaped from sexual slavery recall that their captors explained the girls’ rapes as permissible and even encouraged by Islam, based on the fact that the girls practiced a religion other than Islam.⁸¹

Again, we have at least two reasons to question this use of religion as a justification for the practice of sexual slavery. We might think that there are universal moral norms that condemn sexual violation, especially ongoing sexual violation, as a form of religious devotion. No religion could reasonably justify this behavior. But even if we turn to Islam itself, without relying on a universal or commonsense morality, most modern sects of Islam would not condone the practice of sexual slavery in the name of the Quran.⁸² While Islamic law and scripture permit and regulate slavery, many today would argue that these passages are no longer relevant.⁸³ IS, on the other hand, argues “that these institutions need to be revived, because that is what the Prophet and his

⁷⁹ Rukmini Callimachi, “ISIS Enshrines a Theology of Rape,” *The New York Times*, August 13, 2015. Callimachi relies substantially on first-person interviews, but she also refers to the IS magazine called *Dabiq*.

⁸⁰ Ibid.

⁸¹ Ibid.

⁸² Ibid.

⁸³ Ibid.

companions did.”⁸⁴ So while it may be the case that some IS fighters *believe* themselves to be justified in their actions, the practice of sexual slavery cannot be objectively justified because it is a universal moral wrong to enslave and use the bodies of women and girls, without their consent, for any ends whatsoever.

3.4.D Rights Violation

The final criterion of a wrongful act of harm requires that the harm constitute a rights violation. Feinberg defines a right as a “valid claim which an individual can make in either or both of two directions.”⁸⁵ The first involves claims that could be made against specific individuals to meet their obligations, or as demands for noninterference.⁸⁶ The second involves claims against the state to meet their obligations, or as demands for noninterference, or “claims to the legal enforcement of the valid claims he has against other private citizens.”⁸⁷ I address the possibility of IS existing as a political entity in the next chapter, so I focus on the first of these directions here.

Some claims will be both moral claims against an individual, and legal claims against the state. Criminal acts, for instance, will usually involve both moral and legal claims. Sexual slavery, as well as rape and enslavement individually, are crimes in nearly every jurisdiction in the world, so there is almost certainly a legal right not to be subjected to these sorts of violations. However, even if sexual slavery does not constitute a legal rights violation, it is a moral rights violation. A moral right, according to Feinberg, is “a claim backed by valid reasons and addressed to the conscience of the claimer or to public opinion.”⁸⁸ Based on the well-being interests account of the harm of sexual slavery, it seems that there are valid

⁸⁴ Ibid., quoting Cole Bunzel of the Brookings Institution.

⁸⁵ Feinberg, *Harm to Others*, 109.

⁸⁶ Ibid.

⁸⁷ Ibid.

⁸⁸ Ibid., 110.

reasons to think that individuals have a moral claim right to be free from sexual slavery, whether we consider natural rights or rights that we have from being part of a particular community. The right to move freely (within reason) and maintain control over one's own body (again, within reason) are seriously violated by sexual slavery. Accordingly, based on the foregoing analysis, perpetrators of sexual enslavement, such as IS and its individual members who have sexually enslaved Yazidi women and girls, engage in wrongful acts of harm.

In this chapter, I explored the intuition that mass sexual violence, particularly mass sexual slavery, is the kind of harm and wrong that I will eventually demonstrate should warrant intervention. I engaged with Grotius's understanding of injury-to-chastity and argued that while I agree with his general intuition, I disagreed with his understanding of the location of the harm, and what justified the use of force to prevent the harm. I presented a more plausible account of harm and wrongdoing, arguing for an objective list account of well-being as the best way to understand what constitutes a group-based harm. I applied these accounts to the specific harm of mass sexual slavery, and responded to the claim that a religion could justify this harm by making the act "morally defensible." In the next chapters, I will continue to analyze the harm principle as I answer questions about the political nature of perpetrator groups, and the moral responsibility of groups and their individual members.

CHAPTER IV – TERRORIST GROUP STATEHOOD

In the previous chapter, I analyzed sexual slavery as a harm and as a wrong, relying on the hybrid account of groups I defended in Chapter Two. In this chapter, I return to the question of how to classify perpetrators of mass violence, pulling together concepts from various literatures in a unified approach and focusing on the political status of group perpetrators. The moral, political, and legal obligations that attach to a group may differ based on how we understand that group to function, both in legal terms and in practical terms. The specific question of statehood arises in the midst of the other questions at hand because IS has claimed to be a state, as noted in the first chapter, in both the religious and political senses of the term.

I begin by analyzing authority and recognition as key aspects of statehood from the perspective of political philosophy, where authority refers to the moral right to exert political control, while recognition refers to the respect garnered from others as a legitimate political agent. I go on to consider the relationship between certain political communities and religious communities. I then turn to the requirements for statehood under international law, considering the contrast between the declaratory and constitutive models of statehood, which somewhat mirrors the philosophical distinction between legitimate authority and recognition. I acknowledge the difference between the formal requirements and what might garner informal political recognition by the rest of the international community. Next, I discuss the relationship between political communities and individuals, in terms of the obligations a political community has toward the individuals who are part of the community, and also in terms of the responsibilities of the individual leaders of the political community. Finally, I confront the problem of non-state actors, which today often exercise political control over

territories and/or populations, despite their formal non-state status. This includes a discussion of the relationship between such political communities and the international community of formally-recognized states. Again, I consider how the analysis helps us understand IS throughout, both during the height of their political control and the subsequent downfall beginning in 2017. I conclude that IS should be seen as a non-state actor, rather than a state, but that this does not absolve the organization or the individuals that make up the organization from moral, political, and legal obligations. Both the organization and the constitutive individuals remain members of the international community.

4.1 Statehood and Sovereignty

In this section, I consider several prominent ways of understanding statehood in terms of sovereignty. One way we often think about sovereignty is in terms of the ability of a political community to make its own choices about how it should be governed, or in terms similar to the autonomy model of individuals. However, for our purposes, we are focused on the relationship between a would-be state and the individuals it claims to have the authority to govern, and the relationship between the would-be state and other states. Both of these relationships are closely tied with territoriality. As Max Weber argued, “a state is a human community that (successfully) claims the *monopoly of the legitimate use of physical force* within a given territory. Note that ‘territory’ is one of the characteristics of the state.”¹ In focusing on these two kinds of relationships, I identify the concepts of *authority* and *recognition* as the crucial features of statehood and sovereignty. Early theorists were more concerned with the former than the latter, but I will argue that both authority and recognition are necessary for statehood.

¹ Max Weber, “Politics as a Vocation,” in *From Max Weber: Essays in Sociology*, eds. H.H. Gerth and C. Wright Mills (New York: Oxford University Press, 1946), Part I, Chapter 30, 1. Italics in original.

I only analyze statehood from a political perspective in this section, while I consider the legal analysis in a later section. My view is that political and legal questions of statehood cannot be completely separated. In the domestic realm, the law is promulgated by political institutions. In the international realm, the sources of law include treaties between states, general principles of law, customary international law, and judicial decisions and the writings of “the most highly qualified publicists.”² Each of these sources can or does involve political interests, and nearly every mechanism for enforcement of international law does as well. Accordingly, while I initially consider the political and legal concepts of statehood separately, I maintain that the legal and political conceptions of statehood inextricably rely upon one another. I will return to this discussion in Section 4.3.

4.1.A Authority

A government’s political authority is premised on the government having a moral right, not just the power, to coerce its citizens. H.L.A. Hart makes the distinction between power and authority by drawing on J.L. Austin. He says that an entity with power can compel an individual to act with the threat of “unpleasant consequences.”³ Hart compares this entity to a gunman who threatens to shoot an individual if he does not hand over his property.⁴ The gunman issues “an order backed by threats,” and if the individual complies with the demands, we might say that “he was obliged to do so.”⁵ It seems that this captures what a legal authority does when it threatens punishment for failing to obey orders. However, Hart and Austin distinguish the gunman situation, which involves an order backed by a threat, from the law.⁶ A command issued by an entity with *authority* may or may not be backed by a threat of

² U.N., Statute of the International Court of Justice, June 26, 1945, art. 38, para. 1.

³ H. L. A. Hart, *The Concept of Law*, 2nd ed. (Oxford: Clarendon Press, 1994), 6.

⁴ *Ibid.*

⁵ *Ibid.*

⁶ *Ibid.*, 7, 20.

unpleasant consequences as well, but it need not be.⁷ Rather, an individual is obligated to comply with commands issued by an entity with authority whether or not the individual could ever be met with any threatened unpleasant consequences like punishment.⁸

Authority refers to “the moral power of one agent (emphasizing especially the state) to morally require or forbid actions by others through commands.”⁹ But as already noted, brute power is not sufficient to generate an obligation. A state can only claim to have *legitimate* authority based on the “moral permissibility of the state’s issuing and enforcing its commands owing to the process by which they were produced.”¹⁰ For the remainder of this chapter, I use the term “authority” to mean “legitimate authority” unless otherwise noted.

The next question to answer is where a state gets this authority to command. Even if it is clear why a gunman does not have the right to command simply by virtue of the fact that he can inflict violence, it is not clear why a state *would* have the right to command, or what sort of process would make a state’s commands morally permissible. A state could have a natural right to command, or a state could have acquired the right to command through some sort of authorization process, either implicit or explicit. We could argue, for instance, that each citizen of a state or community authorizes, either implicitly or explicitly, the state to command her to follow certain laws, and punish her if she breaks the law. I adopt such a view of authorization, which limits the scope of legitimate state authority to those affairs which the citizens see as reasonably within the purview of state control. Of course there will not be explicit authorization of each political actor and each political decision from each citizen, but

⁷ Ibid., 20.

⁸ Ibid., 83.

⁹ David M. Estlund, *Democratic Authority: A Philosophical Framework* (Princeton, N.J.: Princeton University Press, 2008), 2.

¹⁰ Ibid.

there must be general community acknowledgement that the state acts with moral authority when it acts within an appropriate scope of control.

4.1.B Recognition

An act of social or political philosophical recognition involves what Avishai Margalit calls “acknowledging and honoring the status of the other,”¹¹ or what Heikki Ikäheimo calls “taking another subject as a subject.”¹² Most contemporary work in recognition theory has been rooted in German idealism, despite its broad historical roots.¹³ Hegel, for instance, developed theories of interpersonal recognition in which persons can only become conscious of ourselves as autonomous agents by having interactions with other autonomous agents.¹⁴ In other words, recognition must be mutual.¹⁵ Robert Brandom argues that “[t]o recognize someone is to take or treat that individual in practice as a self: a knowing and acting subject, hence as subject to normative assessment as potentially committed, responsible, authoritative, and so on.”¹⁶

More recently, theorists have considered whether this view of mutual recognition is too limiting, and asked if we should instead conceive of recognition as “adequate regard,” which would allow us to see recognition in the affirmation of a valuable feature of non-person entities.¹⁷ Some of these views consider the relationship between recognition and social ontology, as discussed previously in Chapter Two, as well as the relationship between

¹¹ Avishai Margalit, “Recognition II: Recognizing the Brother and the Other,” *Aristotelian Society Supplementary*, vol. 75 (Bristol: The Aristotelian Society Publications, 2001): 128.

¹² Heikki Ikäheimo, “On the Genus and Species of Recognition,” *Inquiry* 45, no. 4 (2002): 449.

¹³ Christopher F. Zurn, “Introduction,” in *The Philosophy of Recognition: Historical and Contemporary Perspectives*, eds. Hans-Christoph Schmidt am Busch and Christopher F. Zurn (Plymouth, UK: Lexington Books, 2010), 2.

¹⁴ See G.W.F. Hegel, *Phenomenology of Spirit*, trans. A.V. Miller (Oxford: Oxford University Press, 1977).

¹⁵ Ibid. see also G.W.F. Hegel, *Philosophy of Right*, trans. S.W. Dyde (Kitchener: Batoche Books, 2001).

¹⁶ Robert B. Brandom, “The Structure of Desire and Recognition: Self-Consciousness and Self-Constitution,” *Philosophy & Social Criticism* 33, no. 1 (2007): 137.

¹⁷ See, e.g. Arto Laitinen, “On the Scope of ‘Recognition’: The Role of Adequate Regard and Mutuality,” in *The Philosophy of Recognition: Historical and Contemporary Perspectives*, eds. Hans-Christoph Schmidt am Busch and Christopher F. Zurn (Plymouth, UK: Lexington Books, 2010).

recognition and collective responsibility, as we will discuss in Chapter Five. For our purposes, we are interested in the question of whether or not states can count as objects of recognition.¹⁸ For those who argue that states are “among the recipients that can get recognition in the relevant sense (because they are recognizers themselves and can recognize the other as a recognizer), it need not be the case that [states] must thereby be regarded as persons of some sort.”¹⁹ What matters is still the capacity for mutual recognition.²⁰

4.1.C Statehood

A state, I now argue, requires (to some extent) both sovereign authority and recognition. Jean Bodin, an early theorist of sovereignty, claimed that sovereignty is “the most high, absolute, and perpetual power over the citizens and subjects in a Commonwealth.”²¹ Bodin understood sovereignty primarily in terms of the relationship between the ruler and those over whom it had this high, absolute, and perpetual power. He makes the distinction as such: “For the one was the prince, the other the subject; the one the lord, the other the servant; the one the proprietary and seised of the Sovereignty, the other neither proprietary nor possessed thereof, neither holding anything thereof, but as a feoffer or keeper in trust.”²² For Bodin, the source of this power came from God and the laws of nature. Sovereign powers were to “give account unto none, but to the immortal God alone.”²³ This supreme power

¹⁸ See Simon Thompson, “Models of Democracy and the Politics of Recognition,” in *The Plural States of Recognition*, ed. Michel Seymour (New York: Palgrave Macmillan, 2010), 122.

¹⁹ Laitinen, “On the Scope of ‘Recognition’,” 335.

²⁰ Ibid.

²¹ Jean Bodin, *The Six Bookes of a Commonweale*, trans. Richard Knolle (London: Impensis G. Bishop, 1606), 84. Spelling modernized in Stéphane Beaulac, *The Power of Language in the Making of International Law: The Word Sovereignty in Bodin and Vattel and the Myth of Westphalia* (Leiden: Martinus Nijhoff Publishers, 2004), 107.

²² Bodin, *The Six Bookes of a Commonweale*, 86. Spelling modernized in Beaulac, 107. “Seised” is an alternative spelling of “seized,” meaning having ownership of. A “feoffer” is one who transfers all rights of ownership to another.

²³ Bodin, *The Six Bookes of a Commonweale*, 86. Spelling modernized in Beaulac, 109.

was meant to be used for “giving laws unto the subjects in general, without their consent.”²⁴ The sovereign, however, was not subject to its own laws.²⁵ One result of Bodin’s understanding of supreme authority was that it could only be held by one individual, rather than by a group of individuals.²⁶

Thomas Hobbes shared Bodin’s view of sovereignty as supreme authority. Sovereign power is either obtained by acquisition or by institution, which is when “men agree amongst themselves, to submit to some man, or assembly of men, voluntarily, on confidence to be protected by him against all others.”²⁷ The main underlying motivation for any such covenant among individuals is fear.²⁸ The state’s sovereign power thus comes from the individuals that make up the body politic, as well as the law of nature,²⁹ but not from any other external source. For Hobbes, a state maintains sovereign authority only as long as it can effectively protect the individuals that have consented to obey the sovereign: “For the sovereign, is the public soul, giving life and motion to the commonwealth; which expiring, the members are governed by it no more, than the carcase of a man, by his departed (though immortal) soul.”³⁰

Jean Jacques Rousseau appealed to the general will of the people as the source of sovereign authority. He distinguished between “the will of all” and “the general will,” arguing that “the latter regards only the common interest, while the former has regard to private interests,

²⁴ Bodin, *The Six Bookes of a Commonweale*, 98. Spelling modernized in Beaulac, 112.

²⁵ Bodin, *The Six Bookes of a Commonweale*, 92. Spelling modernized in Beaulac, 112.

²⁶ He claims, accordingly, that a monarchy is superior to other forms of government. See Bodin, *The Six Bookes of a Commonweale*.

²⁷ Thomas Hobbes, *Leviathan* (1651) (Oxford: Oxford University Press, 1998), Chapter XVII, 15.

²⁸ See *ibid.*, Part I, Chapter XI, 66: “Desire of ease, and sensual delight, disposeth men to obey a common power: because by such desires, a man doth abandon the protection that might be hoped for from his own industry, and labour. Fear of death, and wounds, disposeth to the same; and for the same reason.”

²⁹ *Ibid.*, Chapter XXX, 1.

³⁰ *Ibid.*, Chapter XXIX, 23.

and is merely a sum of particular wills.”³¹ Thus the general will reflects the equality of citizens by recognizing each individual only as a member of the collective body, an assembly of people.³² According to Rousseau, “the general will is always right, but the judgment which guides it is not always enlightened,” and so a government is necessary to ensure that the public “conform their wills to their reason.”³³ Yet the government does not exist as something separate from the public. The members of the public are charged with ruling over themselves, because the sovereignty of each individual cannot not be transferred.³⁴ Thus the members of the political community must directly identify the general will and ratify it so that it becomes law,³⁵ which in turn ensures that the public interest or common good is what predominates.³⁶ However, if the general will is not sought, this direct form of government will lack legitimate authority over its citizens, since the citizens are only ever subject to their own, collective, general will.³⁷

More recently, Carl Schmitt advocated for a view of sovereignty that mirrored the centuries-old views of Hobbes and Bodin. He defined sovereignty in terms of supreme authority, claiming that “the sovereign is he who decides on the exceptions,”³⁸ or when to deviate from existing legal norms. For Schmitt, the clearest expression of sovereignty occurs when the law does not identify how to handle an emergency situation, and the sovereign is the entity which both identifies the situation as an emergency and identifies what should be done to alleviate the

³¹ Jean-Jacques Rousseau, “The Social Contract “ in *The Social Contract and the First and Second Discourses*, ed. Susan Dunn (New Haven, CT: Yale University Press, 2002). Book II, Chapter III, 172.

³² Ibid. Book II, Chapter IV, 175.

³³ Ibid. Book II, Chapter VI, 180.

³⁴ Rousseau, “The Second Discourse,” 75.

³⁵ Rousseau, “The Social Contract,” Book II, Chapter VI, 179.

³⁶ Ibid.

³⁷ Rousseau, “The Second Discourse,” 72.

³⁸ Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty*, trans. George Schwab (Chicago: University of Chicago Press, 2005), 5.

emergency.³⁹ The authority of a sovereign is prior to the law, since in an emergency situation “it is clear that the state remains, whereas law recedes.”⁴⁰ Accordingly, even if the law does not give sovereign authority to any particular agent or institution, the identity of the sovereign will become clear when there is an emergency situation.⁴¹

Other theorists focus on statehood in terms of recognition, or the acknowledgement of others that the state is legitimate. This acknowledges that statehood does not exist in a vacuum, and a political community must garner some level of recognition by other states in order to fully participate as a state in the global order. Recognition of political entities “for purposes of structured interaction in a divided international space” has been possible for centuries,⁴² but it is only recently that it has been seen as a coherent alternative to thinking about states as members of the global political community.

Henry Wheaton, influenced by Hegel, distinguished between internal and external sovereignty, and argued that external sovereignty “may require recognition by other States in order to render it perfect and complete.”⁴³ For a political community that wishes to participate in the global political community,

all the members of which recognize rights to which they are mutually entitled, and duties which they may be called upon reciprocally to fulfill, such recognition becomes essentially necessary to the complete participation of the new State in all the advantages of this society. Every other State is at liberty to grant, or refuse, this recognition, subject to the consequences of its own conduct in this respect; and until such recognition becomes universal on the part of the other States, the

³⁹ Ibid., 6, 9. “But sovereignty (and thus the state itself) resides in deciding this controversy, that is, in determining definitively what constitutes public order and security, in determining when they are disturbed, and so on.”

⁴⁰ Ibid., 12.

⁴¹ See *ibid.*; see also Jean L. Cohen, *Globalization and Sovereignty: Rethinking Legality, Legitimacy and Constitutionalism* (Cambridge: Cambridge University Press, 2012), 118.

⁴² Alyson J. K. Bailes, “Legal Precision or Fuzzy Feelings? A Diplomatic Comment on Recognition Studies,” in *Recognition in International Relations: Rethinking a Political Concept in a Global Context*, eds. Christopher Daase, et al. (New York: Palgrave Macmillan, 2015), 257.

⁴³ Henry Wheaton, *Elements of International Law*, 2nd Annotated ed. (London: Sampson Low, Son and Company, 1864), 38-39.

new State becomes entitled to the exercise of its external sovereignty as to those States only by whom that sovereignty has been recognized.⁴⁴

Wheaton thus saw statehood as somewhat distinct from mere sovereign authority.

Hans Kelsen suggested that we should go even further and reject the traditional doctrine of sovereign authority as a sufficient criterion for statehood. He first argues for a distinction between political recognition (considered in this section) and legal recognition (considered more fully in Section 4.3), as he sees only the latter as something that entails a legal obligation. Political recognition, on the other hand, just means that “the recognizing state is *willing* to enter into political and other relations with the recognized state or government, relations of the kind which normally exist between members of the family of nations.”⁴⁵ This is a discretionary act for the recognizing state,⁴⁶ and for Kelsen, it carries significant weight since a so-called state must be able to engage in relations with other states for its status to hold any meaning. However, political recognition “presupposes the legal existence of a state or government to be recognized,”⁴⁷ so for Kelsen any discussion of statehood relies on an understanding of legal recognition. Kelsen sees statehood as something that can only exist as a relative feature of an entity, arguing that a “state exists legally only in its relations to other states,” and accordingly, there is no such thing as the “absolute existence” of a state.⁴⁸ A political community must first self-identify as a state, and then it must be recognized as a state by other states “in order to

⁴⁴ Ibid., 39.

⁴⁵ Hans Kelsen, “Recognition in International Law,” *American Journal of International Law* 35, no. 4 (1941): 605. Italics added.

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Ibid., 609.

become a subject of international law.”⁴⁹ As with Hegel’s understanding of recognition, “mutual recognition is necessary” for a political community’s existence as a state.⁵⁰

Allen Buchanan constructs a theory of recognitional legitimacy in which “[t]he judgment that a political entity is legitimate in the recognitional sense confers the status of being a member in good standing of the state system on that entity, with all the powers, liberties, claim-rights, and immunities that go with that status.”⁵¹ He acknowledges the objective criteria of sovereignty that are often seen as necessary for statehood, but he also considers recognitional legitimacy to be “both necessary and sufficient for being a primary participant in the processes by which international law is formulated, adjudicated, and by which measures designed to increase compliance with international legal norms are devised and implemented.”⁵² Thus, for Buchanan, both sovereign authority and recognition play a role in a political community’s ability to exist and function as a state, and thus both are necessary for statehood. Buchanan’s view seems right, as a state needs to be able to function as a state in terms of exerting sovereign authority over its citizens, to some extent, but it must also be recognized as a state by other members of the global political community. Functionally, a state cannot exist if the political community fails to meet either of these conditions.

These more recent accounts seem to be tracking something important, and that is the relationship between authority and recognition. The accounts of statehood promoted by Bodin, Hobbes, and Rousseau are all internally focused on the relationship between the ruler and the ruled, and while Schmitt’s more contemporary view is more reflective of the global political order, he remains concerned with the objective power of the ruler. But each of these accounts

⁴⁹ Ibid.

⁵⁰ Ibid.

⁵¹ Allen Buchanan, “Recognitional Legitimacy and the State System,” *Philosophy & Public Affairs* 28, no. 1 (1999): 48.

⁵² Ibid., 51.

could be used to explain the internal structures of any sort of political community. If we think there is something unique about statehood, as a particular kind of political community, then it has to be about the community's desire and ability to have a certain kind of relationship with other political communities. The benefit of this particular designation seems to be that it provides level footing for establishing and maintaining these sorts of relationships, and this requires that we take the concept of recognition seriously. Even if a political community does not wish to acquire positive obligations toward other political communities, it is the global order of states that provides the framework for establishing negative obligations. Wheaton fails to go far enough in seeing this recognition as necessary, and Kelsen goes a bit too far in claiming that statehood can *only* be a relative feature of a political community. Again, Buchanan's view strikes the right balance, by requiring a certain kind of relationship between the ruler and the ruled, in addition to a certain kind of relationship between the state and other states.

4.2 Statehood and Islam

Before the modern notion of a state, which grew out of the Treaty of Westphalia in 1648 and the American and French Revolutions of 1776 and 1789, people identified with religious, familial, or tribal identities, rather than identities based on territory.⁵³ Early Muslim communities lived in a variety of political arrangements, including under the rule of non-Muslims.⁵⁴ The founding texts of Islam “do not specify any particular types of governmental institutions nor is most of Islamic political history normative.”⁵⁵ While the Quran contains

⁵³ Imam Feisal Abdul Rauf, *Defining Islamic Statehood: Measuring and Indexing Contemporary Muslim States* (New York: Palgrave Macmillan, 2015), 37.

⁵⁴ *Ibid.*, 36.

⁵⁵ *Ibid.*

“principles upon which a state should be run if Muslims are ruling,” it does not require Muslims to establish their own state.⁵⁶

The individual is generally the subject of Islamic law. The aim of the individual Muslim is to achieve salvation, and the divine law shows the path to salvation through the imposition of certain obligations.⁵⁷ The basic articles of faith that constitute the obligations of individuals are the Five Pillars, which include faith, prayer, charity, fasting, and pilgrimage. These are duties that must be performed by individuals, such that an individual is liable to punishment for failing to perform a duty.⁵⁸ However, early Muslim societies placed much more emphasis on the group than the individual. The rights and obligations of an individual were “always defined in terms of (though subordinate to) the community’s interests.”⁵⁹ Communities were seen as necessary for protecting individuals and ensuring their cooperation, because an individual by himself possessed “weakness and inability either to provide a livelihood or to protect himself against outsiders.”⁶⁰ But society was not enough. A community needed legal authority to properly function. The Quran notes, “if it were not for Allah checking [some] people by means of others, the earth would have been corrupted, but Allah is full of bounty to the worlds.”⁶¹ Early Islamic philosopher Al-Farabi “stressed the necessity of a society in which the individual could attain physical and moral satisfaction” when discussing the model state.⁶²

⁵⁶ Ibid.

⁵⁷ Majid Khadduri, *War and Peace in the Law of Islam* (Clark, N.J.: The Lawbook Exchange, 2006), 25.

⁵⁸ Ibid., 60.

⁵⁹ Ibid., 3.

⁶⁰ Ibid., 4.

⁶¹ Quran II, 251. All quotes from the Quran are from the Sahih International American Translation.

⁶² Khadduri, *War and Peace in the Law of Islam*, 4.

Islam actually predated Hobbes in arguing for the existence of a sovereign authority, to which individuals gave up some of their rights for the sake of their protection.⁶³ The role of the Islamic state was thus instrumental. The Islamic state, which was “derived from and exercised on behalf of God, was potentially capable of governing the whole of mankind,”⁶⁴ and we can see this universalist aspiration as the Islamic state’s obligation. The duty to establish Islam all over the world was the collective duty of all Muslims, rather than that of any one individual Muslim. The universalist aspiration could only be realized, however, if the Islamic state were able to engage in effective dialogue and negotiations with other communities and other states.

As noted in the first chapter, the Quran states that the duty of Muslims is to “strive for Allah with the striving due to Him,”⁶⁵ and “believe in Allah and His Messenger and strive in the cause of Allah with your wealth and your lives.”⁶⁶ The term used to refer to this activity, *jihad*, refers to the “exertion of one’s power in Allah’s path, that is, the spread of the belief in Allah and in making His word supreme over this world,”⁶⁷ by either peaceful or violent means.⁶⁸ The struggle to expand the influence of Islam was meant “to establish peace with justice within a secure political order,”⁶⁹ but the peaceful and secure political order might only be established through war. The Quran distinguishes between personal *jihad* and political *jihad*, where the latter refers to an armed struggle of the state.⁷⁰ Thus political *jihad*, as a collective duty, falls on the

⁶³ Khadduri notes that al-Farabi and Hobbes both argued that “isolated individuals agreed on a universal contract of submission to a ruler who is vested at once with exclusive power.” *Ibid.*, 9.

⁶⁴ Khadduri, *The Islamic Conception of Justice* (Baltimore: Johns Hopkins University Press, 1984), 162.

⁶⁵ Quran XXII, 78.

⁶⁶ Quran LXI, 11.

⁶⁷ Richard C. Martin, “The Religious Foundations of War, Peace, and Statecraft in Islam,” in *Just War and Jihad: Historical and Theoretical Perspectives on War and Peace in Western and Islamic Traditions*, eds. John Kelsay and James Turner Johnson (Westport, CT: Greenwood Press, 1991), 96-97.

⁶⁸ Khadduri, *War and Peace in the Law of Islam*, 55; *The Islamic Conception of Justice*, 164.

⁶⁹ John Kelsay, *Islam and War: A Study in Comparative Ethics* (Louisville, KY: Westminster/John Knox Press, 1993), 34.

⁷⁰ Ahmed Al-Dawoody, *The Islamic Law of War: Justifications and Regulations* (New York, NY: Palgrave Macmillan, 2011), 76.

state. One benefit of the state's obligation, according to Khadduri, is that the "head of the state can in a more effective way serve the common interest of the community than if the matter is left entirely to the discretion of the individual believer."⁷¹ So an Islamic government is arguably the most effective way to fulfil a primary aspect of the Quranic duty to spread Islam. In Muhammad's time, he was the head of government, while Allah was the "titular head of the state and its source of governing authority."⁷² The leaders of the Islamic state following Muhammad's death were called imams, and thus *jihad* as a state doctrine should only be declared by the imam who serves as the head or deputy head of state.⁷³ Quranic "legal principles, such as a penal code or references to international law, can only be enacted by a state government."⁷⁴

Muslims today, despite their religious group membership, live in territory-based nation-states. Modern "Islamic nation-states," a term I use to refer to those states with "constitutions that entrenched Islam or Islamic law (sharia) as *a* source, *a* primary source or *the* primary source for legislation,"⁷⁵ are the closest parallel to the Islamic state referenced in *sharia* law. The Islamic state was a religious entity first and foremost, and was only thought of as a political entity in terms of its responsibility to protect individuals and communities. The head of state was a religious leader, not just a political leader. This is contrary to the religious and political underpinnings of many modern Western states, which distinguish between religious and political leaders regardless of widespread cultural or social commitments to a particular religion. Therefore, to function within the modern global order, "Islam's previous role in governance had

⁷¹ Khadduri, *War and Peace in the Law of Islam*, 61.

⁷² *Ibid.*, 10.

⁷³ *Ibid.*, 94.

⁷⁴ Rauf, *Defining Islamic Statehood*, 36.

⁷⁵ Dawood I. Ahmed and Moamen Gouda, "Measuring Constitutional Islamization: The Islamic Constitutions Index," *Hastings International and Comparative Law Review* 38 (2015): 14. Italics in original.

to be realigned and reconfigured to fit the emergence of the ‘modern’ nation-state.”⁷⁶ As a practical matter, nation-states are subject to the rules and norms of international law. So regardless of the influence of Islamic law on their constitutions or international relations policies, if Muslim majority states want to participate in the modern global order, they will be expected to abide by international law. International law eventually developed in order to manage relations of war and peace between nation-states, and a nation-state that refuses to acknowledge and abide by these laws and norms will be unable to maintain relationships with other members of the global order.

IS is the most recent iteration of a new geopolitical phenomenon, which involves other Islamic political organizations, in addition to Islamic nation-states, declaring themselves to be Islamic States in both the political and religious sense of the term.⁷⁷ Other examples of this phenomenon include “the Taliban’s proclamation of a state subject to Sharia law in Afghanistan in the 1990s, Hamas’s rule in the Gaza Strip since 2006, and Boko Haram’s declaration of an Islamic caliphate in Nigeria in 2014.”⁷⁸ The 2014 declaration by IS, however, has been the most prominent of these declarations, due to the organization’s “territorial successes and sheer brutality,”⁷⁹ which have forced the international community to take this claim more seriously than those of other Islamic political organizations. If IS is a nation-state, and provided that recognition is part of how we understand nation-states, it is subject to the rules and norms of international law, regardless of the influence of Islamic law on its governing documents or international relations policies. Even if Islamic political organizations like IS do not qualify as nation-states, the organizations, and the individuals that make up the organizations, cannot

⁷⁶ Ibid., 16.

⁷⁷ Yosef Jabareen, “The Emerging Islamic State: Terror, Territoriality, and the Agenda of Social Transformation,” *Geoforum* 58 (2015): 52.

⁷⁸ Ibid.

⁷⁹ Ibid.

operate outside of the system of international norms and laws. Any political organization that operates on a global scale will be subject to international laws, including economic law, criminal law, and the laws of armed conflict, even if cannot be held accountable in the same way that a nation-state can be held accountable. I will turn to these specific questions of responsibility in the final chapter. For now, I turn in the next section to an analysis of statehood under international law.

4.3 Statehood and International Law

In Section 4.1, I argued that a political conception of statehood requires both legitimate authority and recognition by other members of the global political community. Here, I will explore the legal conception of statehood, which informs both the legitimacy claims and recognitional possibilities under a political conception of statehood, and also relies on the political relationships identified under a political conception of statehood. The legal and the political do not inhabit two completely separate spheres. Law is “not an answer to politics, neither is it isolated from political purposes and struggles.”⁸⁰ The international legal system, in particular, relies on many non-legal norms and political associations. Thus the following discussion of legal statehood will both rely on and inform the political conception of statehood

4.3.A Legal Theories of Statehood

In international law, the two theories of state recognition mirror the concepts of authority and recognition discussed in Section 4.1. The constitutive theory argues that recognition is constitutive of statehood, and that rights and duties related to statehood derive from recognition by other [recognized] states.⁸¹ The declaratory theory, on the other hand,

⁸⁰ Judith N. Shklar, *Legalism* (Cambridge, MA: Harvard University Press, 1964), 143.

⁸¹ James Crawford, *The Creation of States in International Law* (Oxford: Oxford University Press, 2007).

understands statehood as an objective legal status that exists whether or not the state acquires recognition.⁸²

Most commentators today adopt the declaratory theory.⁸³ The 1933 Montevideo Convention on the Rights and Duties of States, which reflects the declaratory theory, has traditionally been used as a guide for determining whether or not a political entity qualifies as a state. Article 1 sets forth four criteria for statehood: a permanent population, a defined territory, government, and capacity to enter into relations with the other states.⁸⁴ A permanent population is, according to Oppenheim, an “aggregate of individuals of both sexes who live together as a community in spite of the fact that they may belong to different races or creeds, or be of different colour.”⁸⁵ The population “must have the intention to inhabit the territory on a permanent basis,”⁸⁶ and thus the territory must be habitable,⁸⁷ but this does not exclude nomadic populations from the possibility of statehood.⁸⁸ The second condition requires that a state possess some territory, but there are no specific requirements as to the size or shape of the territory.⁸⁹ Statehood “requires a defined territory, but not necessarily defined or agreed external boundaries,” meaning disputes with neighboring states as to the precise status of these

⁸² Ibid.

⁸³ See, e.g., Thomas D. Grant, *The Recognition of States: Law and Practice in Debate and Evolution* (Westport, CT: Greenwood Publishing Group, 1999); John Dugard and David Raič, “The Role of Recognition in the Law and Practice of Secession,” in *Secession: International Law Perspectives*, ed. Marcelo G. Kohen (Cambridge: Cambridge University Press, 2006).

⁸⁴ *Montevideo Convention on the Rights and Duties of States*, signed at the International Conference of American States in Montevideo Uruguay, 26 December 1933, came into force 26 December 1934, art. 1. [hereafter *Montevideo Convention*].

⁸⁵ David Raič, *Statehood and the Law of Self-Determination* (The Hague: Kluwer Law International, 2002), 58; Lassa Oppenheim, *International Law: A Treatise* (Philadelphia: David McKay, 1955), 118.

⁸⁶ Raič, *Statehood and the Law of Self-Determination*, 58-59.

⁸⁷ Ibid.

⁸⁸ International Court of Justice, *The Western Sahara*, Advisory Opinion, 16 October 1975, para 88. They must, however inhabit that land on a permanent basis, see *ibid.*, para. 58.

⁸⁹ *Ibid.*, 60.

boundaries does not preclude an entity from statehood.⁹⁰ However, international law on the use of force does not permit states to take the territory of other states in order to create a new state.⁹¹ The crucial feature of territory is that it must be effectively governed,⁹² which leads into the criterion of government. Recent interpretations of statehood require that a government be effective, rather than merely legitimate.⁹³ The traditional law of statehood requires “an institutionalized political, administrative and executive organizational machinery for the purpose of regulating the relations in the community and charged with the task of upholding the rules,” and this organizational machinery “must actually exercise state authority over the claimed territory and the people residing in that territory.”⁹⁴ Finally, a state must have the capacity to enter into relations with other states. Commentators note that this does not require states to *actually* enter into these relations, just that a state has the *capacity* to do so.⁹⁵ This criterion has been challenged on the basis that it is a “consequence of statehood” rather than a criterion, and also based on the fact that this capacity depends, at any given time, on the particular situation of states.⁹⁶

Article 3 of the Convention states that “the political existence of the state is independent of recognition by the other states,” expressly adopting the declaratory view. The four criteria are supposed to be based on the principle of *ex factis jus oritur*, meaning they are to be viewed

⁹⁰ Ibid.

⁹¹ Colin Warbrick, “States and Recognition in International Law,” in *International Law*, ed. Malcolm D. Evans (Oxford: Oxford University Press, 2003), 222.

⁹² Crawford, *The Creation of States in International Law*, 38.

⁹³ See *ibid.*, 42-47; see also Raič, *Statehood and the Law of Self-Determination*, 49 et. seq.

⁹⁴ Raič, *Statehood and the Law of Self-Determination*, 62; see also Hans Blix, *Contemporary Aspects of Recognition*, Vol. 130 Académie De Droit International Recueil Des Cours (Dordrecht: Martinus Nijhoff, 1970), 633; Oppenheim, *International Law: A Treatise*, 118.

⁹⁵ Raič, *Statehood and the Law of Self-Determination*, 73; see also Bengt Broms, “States,” in *International Law: Achievements and Prospects*, ed. Mohammed Bedjaoui (Leiden: Martinus Nijhoff Publishers, 1991), 45; American Law Institute, “Restatement (Third) of the Foreign Relations Law of the United States,” (1987), 73, para. 201, cmt. (e).

⁹⁶ Crawford, *The Creation of States in International Law*, 61.

without regard to legality or legitimacy.⁹⁷ But having the capacity to enter into relations with other states seems to depend, at least somewhat, on the willingness of other states to enter into relations with a would-be state. This leads us to recognition and constitutive theory. Constitutive theory relies on the idea that a state cannot exist if it is not externally recognized as legitimate by other states. No “formal procedure exists to determine membership status,” but “the other members [of the community of sovereign states] must voice acceptance in substantial numbers before membership is legitimately obtained.”⁹⁸

The constitutive theory of statehood gained prominence following the Congress of Vienna in 1815, when “a small influential state circle granted diplomatic recognition only to 39 political entities in Europe in order that they be treated as sovereign states.”⁹⁹ This rendered state sovereignty a phenomenon that could only come about through the legal act of recognition by its peers, rather than by satisfying a list of objective requirements for statehood.¹⁰⁰ The constitutive model has fallen out of favor over the last century, but there is still much to be said for the idea that recognition could serve as proof of statehood and a commitment from the global community to continue to recognize a state as such.¹⁰¹ Hersch Lauterpacht, for instance, argues that while recognition is “declaratory of an existing fact, such declaration, made in the impartial fulfillment of a legal duty, is constitutive, as between the recognizing State and the new community, of international rights and duties associated with full statehood.”¹⁰²

⁹⁷ Karen Knop, “Statehood: Territory, People, Government,” in *The Cambridge Companion to International Law*, eds. James Crawford and Martti Koskenniemi (Cambridge: Cambridge University Press, 2012), 98.

⁹⁸ Michael Ross Fowler and Julie Marie Bunck, “What Constitutes the Sovereign State?,” *Review of International Studies* 22, no. 4 (1996): 403.

⁹⁹ Georgios Kolliarakis, “Recognition as a Second-Order Problem in the Resolution of Self-Determination Conflicts,” in *Recognition in International Relations*, eds. Christopher Daase, et al. (New York: Palgrave Macmillan, 2015), 186.

¹⁰⁰ *Ibid.*

¹⁰¹ See Malcolm N. Shaw, *International Law*, 7th ed. (Cambridge: Cambridge University Press, 2014), 340; Crawford, *The Creation of States in International Law*, 27.

¹⁰² Hersch Lauterpacht, “Recognition of States in International Law,” *The Yale Law Journal* 53, no. 3 (1944): 419.

As with the political analysis of statehood in Section 4.1, it seems that a political community needs to meet the requirements of both the declaratory and constitutive theories to function as a state under international law. This does not mean that a community will fail to be a state if any one member of the global political and legal community does not recognize that community as a state. It does mean, however, that a community which merely meets the requirements for legal statehood under a declaratory theory of statehood, and does not have mutual recognition with a substantial portion of the rest of the global community, will fail to function as a state. Depending on the context, and assuming other nation-states are acting in good faith, I would argue that a political community that is recognized as a state by less than half of the other nation-states may fail to meet the requirements for statehood. It may be that the lack of recognition is indicative of some moral failure on the part of the would-be state, which would negate the legitimate authority of the political community. But even if the government possesses legitimate authority and exercises sovereign authority over the individual members of the political community, if the community is unable to engage in reciprocal relations with other members of the global order, it cannot function as a state.

4.3.B IS Statehood under International Law

It follows that IS should meet the requirements of both the declaratory and constitutive theories of statehood in order to claim to be a state under international law. I now attempt to give the most generous analysis of IS's claims of statehood possible. This is what matters for official political recognition and thus participation in the international community, and also for identifying the group's responsibilities and liabilities with respect to the individuals over which it claims to exercise sovereign authority, which I consider in the next section.

Under the declaratory theory, it is possible that IS could meet the requirements for

statehood, but unlikely. First, IS should have a population that intends to occupy territory on a permanent basis. As of June 2015, IS had control over territories containing a population of eight million inhabitants.¹⁰³ While the population intends to stay in the territory, it is unlikely that most of the population would decide to be part of a state controlled by IS. But despite this fact, and the fact that IS members and other individuals may be non-permanent, there is no requirement that there be a particular relationship between the leaders of the political group and the population.¹⁰⁴ Accordingly, IS probably satisfies the first condition for a permanent population.

Second, IS should have a defined territory. IS maintained control over a significant amount of territory from 2014 through early 2017. At the time, it controlled “cities, towns, refineries, and uses major conventional weapons including tanks to confront conventional armies of states with some degree of success.”¹⁰⁵ Precisely-defined borders are not necessary in order for the existence of a broadly-defined territory to be recognized, because all that is required is that the political entity be able to “deny others from using coercion on its territory.”¹⁰⁶ So land can be permanently contested and still be considered legitimately defined territory. However, the overall stability of IS control and the means by which IS acquired the territory in Iraq and Syria are straightforwardly challenged. While IS consistently maintained control over territory, it gained and lost control over particular areas on a regular basis. It also appears that IS acquired the territory in Syria and Iraq in violation of Article 11 of the Montevideo Convention, which declines “to recognize territorial acquisitions or special advantages which have been obtained by force whether this consists in the employment of arms, in threatening diplomatic representations,

¹⁰³ Ben Emmerson (Special Rapporteur), *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, U.N. Doc. A/HRC/29/51, 16 June 2015, para. 15.

¹⁰⁴ See Knop, “Statehood: Territory, People, Government,” 101.

¹⁰⁵ See Zeray Yihdego, “The Islamic ‘State’ Challenge: Defining the Actor,” in *E-International Relations* (2015).

¹⁰⁶ Adele Belanger-McMurdo, “A Fight for Statehood? Isis and Its Quest for Political Domination,” in *E-International Relations* (2015).

or in any other effective coercive measure.”¹⁰⁷ IS asserts that it has a moral right to the territory, which could negate the claim that their methods of acquisition were impermissible. This seems wrong, but the law would not recognize this claim regardless of its validity. Thus the grounds for establishing a defined territory are shaky at best.

Third, IS should have a government. There is clearly a well-organized hierarchy in place to facilitate the administrative functioning of the military and political communities.¹⁰⁸ The organization is complex and appears to function like a government, without relying too much on any one individual leader.¹⁰⁹ Sharia law governs both households, business, and courts, and taxes are imposed on both Muslims and non-Muslims.¹¹⁰ There is no democracy nor is there much respect for rule of law,¹¹¹ but these are not disqualifying under the Montevideo Convention. Thus IS should be able to meet this criterion.

Fourth, IS should have the capacity to enter into relations with the other states. Recall that on the declaratory theory, this requirement is just about capacity for relations, not actual relations. IS has participated in economic transactions and engaged in “informal inter-state relations through social media platforms, where the group readily posts messages to states such as Italy, and the US.”¹¹² This dialogue has not been reciprocated, but this is not required. Because no other state has recognized its statehood, and there are no international agreements between IS and any other international actor, the possibility of relations with other states seems implausible.¹¹³ The “admission of an entity to international organizations and its participation in

¹⁰⁷ *Montevideo Convention*, art. 11.

¹⁰⁸ Audrey Kurth Cronin, “ISIS Is Not a Terrorist Group,” *Foreign Affairs* 94, no. 2 (2015).

¹⁰⁹ *Ibid.*

¹¹⁰ *Ibid.*

¹¹¹ Knop, “Statehood: Territory, People, Government,” 73.

¹¹² Belanger-McMurdo, “A Fight for Statehood.”

¹¹³ Marco Longobardo, “The Self-Proclaimed Statehood of the Islamic State between 2014 and 2017 and International Law,” *Anuario español de derecho internacional* 33 (2017): 227.

many bilateral or multilateral treaties play a role in the statehood discourse,” even if the declaratory theory rejects recognition as a criterion.”¹¹⁴ It remains possible for IS to meet this criterion, if this criterion can be met purely in the abstract or we adopt a broad view of what counts as “relations,” and thus it remains possible for IS to qualify as a state under the declaratory theory of statehood.

The implausibility of IS’s statehood claim is even more glaring when we turn to the constitutive theory, as there is no evidence that other states accept IS as a member of the international sovereign state system. Only other non-state actors (or terrorist groups) have claimed allegiance to and acceptance of IS as a sovereign power.¹¹⁵ Other States actually “consider it a perversion that [IS] calls itself a State while simultaneously violating the fundamental rights of local inhabitants”¹¹⁶ and engaging in acts of aggression against sovereign states. For IS to achieve recognition by other states, it would need to acquire territory by less violent and more legitimate means.¹¹⁷ Accordingly, due to the somewhat weak argument for statehood under the declaratory theory, and the very weak argument for statehood under the constitutive theory, I argue that IS should be considered a non-state actor.

4.4 Relational State/Non-Statehood

The final inquiry for this chapter relates to the relationship between a state (or non-state actor) and other entities, including both individuals and other political actors. I argued in the last section that IS should not be considered a state, since it fails to meet the requirements of the constitutive theory of international law, and likely does not meet the requirements of the declaratory theory of international law either. However, I will briefly consider how the

¹¹⁴ Ibid., 226.

¹¹⁵ Belanger-McMurdo, “A Fight for Statehood.”

¹¹⁶ See U.N. Security Council, 69th Sess., 7272nd mtg., 24 September 2014, p. 14 (statement of Australian Prime Minister Abbott).

¹¹⁷ Belanger-McMurdo, “A Fight for Statehood.”

group's relationship to individuals and other political actors differs based on whether it is considered a state or a non-state actor. This analysis will set up the questions explored in Chapter Five regarding responsibility.

4.4.A Relationship to Individuals

If IS is a non-state actor, then the relationship between the between members of IS and the Yazidi people is likely one of civilians relating to civilians, or if we think of IS as a unit, between a non-state institution and civilians. This would mean that there are no positive obligations between IS members and the Yazidi people. Rather, all of the individuals would possess negative obligations to not commit crimes of theft, murder, sexual violence, etc. against the other individuals. These obligations would fall under the domestic laws of Syria and Iraq, as applicable, and international criminal law.

However, if we consider IS to be a state, then the relationship between IS and the Yazidi people involves different obligations. It might be that the Yazidi people are citizens of a different state, and IS is perpetrating harms on citizens of another state. In this case, IS and its members would again be subject to the applicable domestic and international criminal laws for crimes against individuals, as well as the international crime of aggression. It could also be that the Yazidi people are citizens of the Islamic State, in which case the harm of sexual slavery is a harm done by IS to its own citizens. In the former case, the state might be able to claim to be acting in accordance with domestic law, but could be subject to individual and joint criminal responsibility under international law. If the Yazidis are citizens, the collective entity would have particular positive obligations toward the individual Yazidis, in virtue of its political status as a state, obligations that would warrant intervention by other states (including territorial incursions) if breached.

Finally, the Yazidi people could be members of some other category of people living in the Islamic State with a status different from that of full citizen. Islamic law suggests that the aim of the Muslim world is to bring the entire world to the Islamic faith, and thus the Muslim world consists of two parts: the Muslim and the non-Muslim. For IS, the Islamic State is the Muslim part of the world, which is known as *dar al-islam*, or the “domain of Islam,” while the rest of the world is *dar al-harb*, or the “domain of war.” The *dar al-Islam* refers to communities of Muslims, but also has historically included “non-Muslim communities, the *dhimmis* (protected people), whose separate communal laws and leaders were tolerated by the Islamic state as long as they did not challenge Muslim sovereignty.”¹¹⁸ The *dhimmis* (mostly Christians and Jews) were permitted to retain their own religions, but they were required to pay a poll tax to the Islamic authority.¹¹⁹ The *dar-al harb*, however, existed in a “state of nature” because the *dar-al harb* “lacked the standard of justice granted to believers under the Islamic public order.”¹²⁰ So the Yazidis could be *dhimmis*, protected people living under the sovereign rule of IS. Or they could be part of the *dar-al harb*, which means IS sees them as outside the rule of law governing states, and already in a potential state of war.

It follows that if IS is a non-state actor, the entity and its individual members have at least negative obligations of non-interference toward the Yazidi people. But if IS is a state, as it has claimed to be, then IS has positive obligations to protect the Yazidi people, either as citizens or as *dhimmis*. I am not a scholar of Islamic law, so I cannot say which status reflects the correct interpretation of Islamic law, but IS must have a view if it claims to exert legitimate control over the Yazidi people. In either situation, they cannot be justified in the rape, murder, or enslavement

¹¹⁸ Sohail H. Hashmi and James Johnson, “Introduction,” in *Just Wars, Holy Wars, and Jihads: Christian, Jewish, and Muslim Encounters and Exchanges*, ed. Sohail H. Hashmi (New York: Oxford University Press, 2012), 10.

¹¹⁹ ‘Abd Allāh Aḥmad Na‘īm, *Islam and the Secular State: Negotiating the Future of Shari‘a* (Cambridge, MA: Harvard University Press, 2008), 31; Khadduri, *The Islamic Conception of Justice*, 163.

¹²⁰ Khadduri, *The Islamic Conception of Justice*, 163.

of the Yazidi people based on the relationship between the political entity and the individual Yazidis.

4.4.B Relationship to Other Political Actors

The next question about statehood targets the relationship between a state or non-state actor and the rest of the world, as individual states, regional institutions, and the global community as a whole. While international law governs state actors more directly than other actors, any political organization has certain legal and political obligations under international law. For our purposes, IS and its members are subject to international humanitarian law, and may be subject to international criminal law (which I do not address here). This is again important to set us up for the next chapter, when we consider both the responsibility of perpetrators and the responsibilities of other actors in responding to mass atrocities.

Most of the global community would not classify IS as a state, but instead would identify the group as a non-state actor at best, and as a terrorist group at worst. So even if IS sees itself as a state, there is likely a conflict between the group and the rest of the world as to how IS should be recognized, and a lack of mutual recognition. This means that nearly every member of the global community is not engaged in political or diplomatic relations with IS. Instead, much of the global community is participating either directly or indirectly in a campaign to limit the reach and violence generated by IS. This gives little support for the idea that IS is globally recognized as a legitimate political community on equal footing with states. On the legal front, there is clearly no legal recognition of IS as a state. Recognition of IS as a state would violate the sovereignty of states in the region, particularly Syria and Iraq. Again, it seems most plausible to view IS as a non-state actor, because their claims of territory or legitimacy as a state are invalid. If IS is a non-state actor, then the relationship it has with other

political communities is not reciprocal. Rather, IS continues to have negative obligations toward other states and their inhabitants, including duties to respect borders and obligations to obey laws on non-international armed conflicts. But it would not have any rights as a member of the state system either.

If IS was recognized politically and/or legally as a state, on a reciprocal footing with the current states, it would have certain rights and obligations under the global political and legal order. IS would have the right to participate in the state system and in international organizations, and it would be entitled to a certain amount of respect of its choices as to political and economic operations, as well as territorial claims. But legal recognition of IS as a state would also invoke the application of international legal norms, including norms related to war and human rights. IS would be subject to international humanitarian law, with respect to its fighting. This would be a benefit in terms of ability of the international community to more clearly define its obligation to the Yazidi people and others, and in terms of its ability to hold IS accountable under international law, but it would also require respecting IS's political and territorial claims.

4.4.C IS and its Shifting Power

I want to make a final point about the status of IS as a non-state actor in light of recent geo-political events. IS's strongest claim related to statehood related to the territory it controlled at the height of its power. In mid-2015, for instance, IS may have controlled over 50 percent of Syria's landmass.¹²¹ IS was able to regulate the territory through administrative control and operational military capabilities.¹²² Yet as of this writing, in early 2018, IS no longer maintains control over substantial territory. The group has been effectively defeated in both Syria and Iraq,

¹²¹ Kareem Shaheen, "ISIS 'Controls 50% of Syria' after Seizing Historic City of Palmyra," *The Guardian*, May 21, 2015.

¹²² Armin Rosen, "What Everyone Is Missing About ISIS's Big Week," *Business Insider*, May 22, 2015.

having lost Mosul in Iraq and Raqqa in Syria toward the end of 2017.¹²³ This raises questions about permanence – could IS really have been considered a state for such a short time, holding such tenuous control over territory? It seems that this is a good reason to have a multi-faceted definition of statehood. Conquering territory without recognition of the legitimacy of the claims will likely not result in long-term claims of statehood. The claims should be legitimate and garner some level of recognition from the international community. IS did not meet these criteria, and while their power has certainly changed, including their effective control over territory, their political status has not. Although it would be strange for the organization to have been a state three years ago, and not today, this is not dispositive. It does suggest, however, that we should think about the requirements for statehood in terms of maintaining a stable global order. If the line between statehood and non-statehood is too fine, there will be a significant impact on international relations, as states move in and out of a certain kind of participation in the international community. This is yet another reason why both authority and recognition are necessary to establish a community as a particular kind of political actor.

In this chapter, I explored the political classifications and relationships that can be utilized in understanding a political entity like IS. I considered the relationship between Islamic law and states, and I analyzed the moral, political, and legal constructions of statehood, arguing that the classification should only be applied to groups that can satisfy both objective (declaratory) and relational (constitutive) requirements. aimed at establishing a framework for how we should think about individuals and groups. I looked at the relationship between political groups that may or may not be states, and their relationships with both individuals and other

¹²³ Patrick Cockburn, “Preview 2018: After a String of Defeats in Iraq and Syria What 2018 Means for ISIS,” *Independent*, January 1, 2018.

political communities. I argued that IS should be considered a non-state actor rather than a state, because it cannot meet the relational requirements, and may not be able to meet the objective requirements either. But whether or not IS is a state, it has minimal obligations of non-interference with the Yazidi people, and the ongoing acts of sexual slavery certainly represent a failure to meet these obligations. In the chapter that follows, I turn to questions of responsibility.

CHAPTER FIVE – RESPONSIBILITY FOR SEXUAL SLAVERY

In this final chapter, I build on my conceptions from previous chapters of groups, harm and political relationships to answer moral questions about how to assess responsibility in the case of the Yazidi women and girls. I consider the various types of individual and collective responsibility that arise from this and similar situations, in which both individuals and groups act to harm, and perhaps more interestingly, both individuals and groups fail to act to prevent harm. This chapter provides some resolution in terms of how we should understand the moral responsibility of these various entities, as well as an opening for how we might address the challenging questions of legal responsibility in the future.

I begin with a general overview of the relevant features of moral responsibility, building on the discussion from Chapter Two about intentions and actions, and distinguishing the purpose of moral responsibility from purely causal or legal forms of responsibility. I construct a representative scenario of sexual enslavement of a Yazidi girl by an IS fighter to illustrate, for the rest of the chapter, the different models of responsibility that attach to this instance of harm. I then turn to three forms of moral responsibility and consider each in turn. First, I look at the traditional concept of individual responsibility for individual acts. Second, I look at collective responsibility for group acts. And finally, I look at shared responsibility of individuals and other entities for failures to act as a group to prevent harm. In this final section, I look not only at the responsibility of members of IS for harm done, but also at the responsibility of states and international organizations for failures to prevent harm. I ultimately conclude that many individuals and entities can be held responsible, in various ways, for the harms that have already been done to the Yazidi women and girls, and those that have been allowed to continue.

5.1 Moral Responsibility

In this section, we can begin to understand moral responsibility as a general concept by first distinguishing it from other kinds of responsibility, and then go on to identify the necessary features for holding an individual or entity morally responsible. We will then return to the idea of what makes moral responsibility distinctive and identify the purpose of having practices of holding others (and perhaps ourselves¹) morally responsible.

One way to think about responsibility is in terms of causation. A hurricane, for instance, might be “responsible” for severe flooding in a coastal community. This sort of responsibility involves identifying causal connections, and thus it can be attributed to nature and other things that we wouldn’t be able to hold morally responsible. Another way to think about responsibility is in terms of legal obligations. An insurance company, for instance, might be legally responsible for paying to repair a home that flooded as a result of a hurricane, due to a contractual relationship between the homeowner and the insurance company. An individual who intentionally shot and killed a co-worker might be legally responsible for the death of the co-worker, in addition to being both causally and morally responsible. So while someone may incur more than one kind of responsibility due to their action or inaction, or due to their relationships, they are distinct.

A person can be thought of as *morally* responsible when she is an apt target of moral praise or blame. In other words, moral responsibility involves the reactions that we should have to the choices individuals make. According to Aristotle, “praise and blame are dependent on whether the people in question are compelled or not to act as they do,”² thus we can only identify an apt candidate for praise or blame based on her voluntary actions and voluntary

¹ While holding oneself morally responsible is an important and interesting inquiry, it is outside the scope of this chapter.

² Aristotle, *Nicomachean Ethics* (Chicago: The University of Chicago Press, 2011), 1110a35.

dispositions.³ Holding someone morally responsible through the practices of blaming or praising involves responding in a particular way to something of negative or positive normative significance, such as a character trait or behavior. Blame can either be seen as a judgment about an individual, or as an emotional response based on the features of interpersonal relationships. But most theorists agree that an emotional response rests on a judgment that an individual is, in fact, objectively responsible.⁴ I return to the questions of blaming practices shortly and again in later sections.

The most important questions about moral responsibility, for our purposes, are how we designate someone (or *something*) as a moral agent, and when that agent can be properly met with the reaction of praise or blame. In general, “the capacity to recognize the interests of others as making valid claims on one is necessary for moral agency.”⁵ Scanlon argues that moral blame is inappropriate when “a person lacks the general capacities presupposed by moral agency. If, as a result of mental illness or defect, a person is unable to understand and assess reasons or his judgments have no effect on his actions, then he cannot be a participant in a system of co-deliberation, and must be seen, rather, as simply a force to be dealt with, like an animal.”⁶ Thus we cannot consider certain individuals to be full moral agents, such as children or other individuals who cannot process reasons to act as members of a moral community. R. Jay Wallace goes further and requires that moral agency involves the “ability to grasp and apply moral

³ Ibid., 1109b30–35.

⁴ But see P. F. Strawson, “Freedom and Resentment,” in *Freedom and Resentment and Other Essays* (New York: Routledge, 2008).

⁵ Gary Watson, “The Trouble with Psychopaths,” in *Reasons and Recognition: Essays on the Philosophy of T. M. Scanlon*, eds. R. Jay Wallace, Rahul Kumar, and Samuel Richard Freeman (New York: Oxford University Press, 2011), 308.

⁶ Thomas Scanlon, *What We Owe to Each Other* (Cambridge, MA: Harvard University Press, 1998), 280.

reasons,” but also the ability “to govern one's behavior by the light of such reasons.”⁷ He would not attribute moral agency to one who could not “reflect on the ends they incline one to pursue in light of moral principles, and to adjust or revise one's ends as a result of such reflection.”⁸ This bar seems high, albeit desirable. Thus I will adopt Wallace’s view of moral agency, but with a minimal requirement for the ability to self-reflect. Minimal motivation should not disqualify one from the status of being a moral agent, although no motivation should, thus I will adopt a limited view that one must be able to understand, consider, and apply moral reasons.

In thinking about when someone is not a moral agent, we can identify two different cases. In the first, moral agency is temporarily withheld, and a particular act is deemed “excused.” Excuses “challenge the claim (or suspicion) that s was morally responsible for x; they adduce conditions that make it unfair to hold s morally responsible for x.”⁹ An excuse does not change the fact that the act was morally wrong, but an excuse prevents a particular person from being deemed blameworthy for that action. Scanlon describes this as a situation in which “some agent, moral appraisal of whom is generally appropriate, cannot be judged on the basis of the action in question, since it does not reflect that person’s judgment-sensitive attitudes.”¹⁰ It might be inappropriate, for instance, to blame someone who does something accidentally, when it would be morally condemnable had it been done intentionally. It may also be inappropriate to blame someone who commits an immoral act, but does so in pursuit of an end that could justify the immoral act. However, an excuse does not prevent us from holding a moral agent as morally responsible *in general*. In the second case, moral agency is permanently (within or without a

⁷ R. Jay Wallace, *Responsibility and the Moral Sentiments* (Cambridge, MA: Harvard University Press, 1994), 1.

⁸ *Ibid.*, 14.

⁹ *Ibid.*, 120. See also J. L. Austin “A Plea for Excuses,” as reprinted in J. L. Austin, *Philosophical Papers*, eds. J. O. Urmson and G. J. Warnock, 3rd ed. (Oxford: Oxford University Press, 1979), 175-204.

¹⁰ Scanlon, *What We Owe to Each Other*, 278.

particular timeframe) withheld, and a particular individual is deemed “exempt” from moral agency. While an excuse attaches to a particular act, exemptions attach to a would-be moral agent. P.F. Strawson argues that it would be unfair to hold someone morally responsible while they are under short-term conditions like hypnosis or extreme stress, and under long-term conditions like insanity or psychopathy.¹¹ These exemption conditions acknowledge the criteria for moral agency discussed above by relieving a person of moral agency if she does not have what Wallace refers to as “the powers of reflective self-control.”¹² He requires that a moral agent must have (1) the power to grasp and apply moral reasons, and (2) the power to control or regulate his behavior by the light of such reasons.”¹³ The cases described by Strawson as extreme situations in which we should not hold someone morally responsible involve an inability to exert control over one’s own behavior through the use of moral reasoning.

The second of these questions, when an agent can be properly met with praise or blame, acknowledges the fact that we don’t want to hold someone responsible for something over which that person had no control. We want our practice of blaming to track the choices that someone has made, rather than bad luck (or mere bad luck). But how do we determine when someone has made a choice without undue influence? Arguably, no one acts without the influence of others, or the past influence of others. Aristotle argues that voluntary actions must originate in the decision-making of the agent, rather than as the result of compulsion or ignorance.¹⁴ When an agent is aware of the particular circumstances of an action, and makes the choice to take the action (even where there is a confined set of choices), an agent acts

¹¹ Strawson, “Freedom and Resentment,” 8-9.

¹² Wallace, *Responsibility and the Moral Sentiments*, 157.

¹³ Ibid.

¹⁴ Aristotle, *Nicomachean Ethics*, 1110a1.

voluntarily, and we may properly blame him.¹⁵ This relies on the agent's ability to exert some amount of self-control and self-awareness. Thus returning to Wallace once again, it is only appropriate to blame an agent if she can exert reflective self-control.

It should now be clear that when we talk about moral responsibility, we generally act under the assumption that a particular action has been taken (or not taken) by an agent. Most of the questions that remain relate to the mental state of the moral agent, in terms of their intent, external influences, and the presence of alternative possibilities. When we get to group responsibility in the third and fourth sections, the action questions will become more challenging.

There is one final aspect of moral responsibility to discuss before we set up a case study and consider the relevant ways moral responsibility can be properly attributed to different individuals and groups: the purpose of moral responsibility. I have already discussed the practice of praising and blaming, but we have not delved into the reasons why we might want to have this practice, instead of just thinking about responsibility as causal or legal in nature. There are two main views about when someone is "appropriately" blamed. The first is Kant's merit-based conception, that someone is appropriately praise or blamed when this reaction is merited, or deserved, due to her choices.¹⁶ The judgment that an agent is blameworthy involves an assessment of her metaphysical control and the possibility of alternative actions.¹⁷ The other view is that praise or blame is warranted when the reaction is

¹⁵ Ibid., 1111a22–4.

¹⁶ See, e.g., Kevin Magill, "Blaming, Understanding, and Justification," in *Moral Responsibility and Ontology*, ed. Ton van den Beld (Dordrecht: Kluwer Academic Publishers, 2000); Wallace, *Responsibility and the Moral Sentiments*; Gary Watson, "Two Faces of Responsibility," *Philosophical Topics* 24, no. 2 (1996).

¹⁷ Gary Watson, "Responsibility and the Limits of Evil," in *Responsibility, Character, and the Emotions*, ed. Ferdinand Schoeman (New York: Cambridge University Press, 1987), 258.

likely to lead to a desirable outcome, such as the actor changing her behavior in the future.¹⁸ A judgment on the consequentialist view involves an assessment of the agent's control in terms of whether the behavior could be influenced by praise or blame.¹⁹ A third view comes from Strawson, who argues that we can't actually justify our blaming practices from an external perspective, be it Kantian or consequentialist. Rather, according to Strawson, we praise or blame because it is an essential feature of our interpersonal way of life.²⁰

I adopt a moderate consequentialist view of moral responsibility, which includes features of the Kantian and Strawsonian views of blameworthiness. I don't agree with the Kantian sentiment that we must hold everyone to account for their actions in order to show the appropriate respect for them as moral agents. We shouldn't seek to blame an individual if the practice seems likely to generate only negative outcomes. But neither should we blame individuals purely based on desired outcomes. Blame must be merited in some way, through the choices that one has made, for blame to be properly attributed, or else the practice will become meaningless. I agree with Strawson's view of reactive attitudes as a constitutive part of our interpersonal relationships, and I think the consequentialist view of blame can incorporate the importance of acknowledging and maintaining these relationships through practices of praise and blame. If we want to live in communities, which I would argue is a desirable outcome, we need to be able to hold each other responsible for our choices. I now turn to what this practice of blaming should look like in the context of the sexual enslavement of Yazidi women and girls.

¹⁸ See, e.g., J. J. C. Smart, "Free-Will, Praise and Blame," *Mind* 70, no. 279 (1961); Daniel C. Dennett, *Elbow Room: The Varieties of Free Will Worth Wanting* (Cambridge, MA: MIT Press, 1984); Manuel Vargas, *Building Better Beings: A Theory of Moral Responsibility* (Oxford: Oxford University Press, 2013).

¹⁹ Watson, "Responsibility and the Limits of Evil," 258.

²⁰ Strawson, "Freedom and Resentment," 24.

5.2 Case Study: Nadia Murad

In order to draw out the different models of moral responsibility for the harm of sexual enslavement of Yazidi women and girls, and to make some distinctions between these models for different actors, I will present some salient features of a real case study. This case study comes from the story of Nadia Murad, a young Yazidi woman who was captured and held as a sex slave in 2014, as she tells it in her memoir.²¹ Nadia herself notes throughout her story the individuals and groups of individuals that she holds responsible for actions taken and actions not taken, which resulted in serious harm to herself, her family, and her community. There are many atrocities described in her story, but I will focus on responsibility for harms that occur to Nadia leading up to and during her ordeal as a sex slave.

Nadia²² was living with her family in a town called Kocho in 2014 when IS fighters arrived to the Sinjar region. The Kurdistan Regional Government had sent additional peshmerga (military forces) to guard the Yazidi towns after IS captured Mosul, but when IS drew close, the peshmerga withdrew, and many of the Sunni Arab neighbors welcomed the IS militants. IS began launching attacks on surrounding communities, facing little resistance, and many Yazidis fled to Mount Sinjar, where they were trapped without food or water. Some of these Yazidis eventually escaped to Syria with the help of U.S. air strikes. Nadia stayed with her family in Kocho for nearly two weeks after the siege of Kocho began on August 3, unable to flee due to the presence of IS militants. They heard rumors that Yazidi women and girls had been abducted and were being used by IS as sex slaves.

On August 15, Nadia's family was told by IS to gather at the primary school, where they would be given the choice to convert to Islam or be taken to Mount Sinjar to stay with

²¹ Nadia Murad and Jenna Krajeski, *The Last Girl: My Story of Captivity, and My Fight against the Islamic State* (New York: Tim Duggan Books, 2017).

²² In the case study I will refer to Murad by her first name, Nadia.

the rest of the Yazidis who had refused to convert. However, when they reached the school, none of the Yazidis were taken to Mount Sinjar. Nadia's family and community was split up by age and sex. The men were put on a truck and shot, with only a few survivors. The boys were forced to convert to Islam. The older and married women were eventually killed, and the younger women were transported several times, with Nadia eventually ending up in Mosul. On the bus ride, one of the men, Abu Batat, began groping the breasts of the girls while he walked up and down the aisle of the bus. He also forced some of the girls to stand and have their pictures taken, ostensibly for use later as part of their being sold as slaves. When Nadia complained about the abuse to a commander, Nafah, he responded: "'I don't know what you thought we had taken you for,' he said. 'But you have no choice. You are here to be *sabaya*, and you will do exactly what we say. And if any of you scream again, trust me, things will be even worse for you.'"²³ Nadia explains this term to her reader as follows:

When ISIS took over Sinjar and began kidnapping Yazidis, they called their human spoils *sabaya* (*sabiyya* is singular), referring to the young women they would buy and sell as sex slaves. This was part of their plan for us, sourced from an interpretation of the Koran that had long been banned by the world's Muslim communities, and written into the fatwas and pamphlets ISIS made official before they attacked Sinjar. Yazidi girls were considered infidels, and according to the militants' interpretation of the Koran, raping a slave is not a sin. We would entice new recruits to join the ranks of the militants and be passed around as a reward for loyalty and good behavior. Everyone on the bus was destined for that fate. We were no longer human beings—we were *sabaya*.²⁴

When the bus reached Mosul and the girls were moved into a heavily-guarded house, Abu Batat and Nafah burned Nadia with a cigarette on her stomach and shoulder to punish her for speaking out against the molestation by Abu Batat and for screaming when he touched her. She made a pact later that night with her niece Kathrine, that they would commit suicide

²³ Murad and Krajeski, *The Last Girl*, 186.

²⁴ Ibid. Italics in original.

before being taken by the IS militants, but they quickly changed their minds and promised to help each other escape if they could. The next day Nadia was sold to a high-ranking IS official, a judge, called Hajji Salman, and the day after that she was forced to convert to Islam and “marry” Hajji Salman, meaning she was officially declared to be his property. After the marriage they stopped at the house of Morteja, Hajji Salman’s guard. Nadia recalls meeting Morteja’s mother and being shocked that this woman had done nothing to stop the IS militants from taking over Mosul and making people suffer, and instead was openly celebrating the enslavement of girls like Nadia.

Hajji Salman raped Nadia daily for four or five days before he sold her. Despite the presence of many guards, on Nadia’s last night in Hajji Salman’s house, she attempted to escape through a window. After she was caught, Hajji Salman beat her with a whip, and then she was gang raped by Morteja and two other IS militants who were guards in the house. The following day she was sold to a man named Abu Muawaya who lived in nearby Hamdaniya. Nadia was raped by Abu Muawaya and his friends for several days before she was again moved. Abu Muawaya left her at a checkpoint between Hamdaniya and Mosul, where she was raped by two IS militants. A man named Hajji Amer picked her up from the checkpoint the next day and drove her back to Mosul, where he assaulted her and told her she would be in his house for a week, and would be moved to Syria. Hajji Amer left Nadia alone with the door unlocked, and she was able to escape, eventually making her way back to Kurdistan to be reunited with what remained of her family with the help of a Sunni family in Mosul.

5.3 Individual Responsibility

Identifying individual responsibility for individual acts is the most straightforward analysis of responsibility, assuming at least some acts can be individuated. As noted in

Section 5.1, we need to identify that an agent has reflective self-control, which means they are not exempt from moral responsibility, and that their specific actions are not excused by the circumstances surrounding the action. As I am skeptical of the possibility of psychopaths, and particularly with respect to the participants in mass atrocity, I will assume that this exemption condition does not apply to any of the individuals considered in what follows. Because of the limited information we have about each individual, and their respective religious views and educational background, I also do not consider whether the excuse of ignorance applies. It could be argued that each member of IS, and particularly those who fulfill lower-level roles within the organization, could claim ignorance that what they are doing is wrong given their firmly held religious views. I accept at least certain objective moral claims, and the wrongness of sexual slavery is one of them (see Chapter Three). Accordingly, although I suppose it is theoretically possible, this claim sounds absurd, and thus I do not consider whether individual perpetrators could be excused for their actions on these grounds. Because this needs little setup beyond what was already explicated in Section 5.1, I will turn immediately to an analysis of the individuals involved in perpetrating harm on Nadia.

In the case of sexual enslavement, such as that experienced by Nadia, it is perhaps easier than in some other cases of mass atrocity to identify individual perpetrators with clear individual responsibility. In cases of mass killing with the aim of extinction, for instance, the ultimate goal cannot be achieved without the participation of many perpetrators. Yet once the aim has been achieved, in most cases the perpetrators will move on to achieve another goal, either jointly or separately. But with sexual enslavement, despite the participation of many to create the conditions necessary for the individual atrocities to occur, it is individuals who

make the choice to confine and assault the women and girls. Thus it is relatively simple to analyze the moral responsibility of at least some of the perpetrators.

We can begin with Abu Batat, who is participating in the larger project by supervising the transportation of the Yazidi women and girls to Mosul, but also has his own project. He chooses to exercise his power over all of the girls on the bus, and Nadia in particular, by groping and taunting them. There is no indication that he is acting under someone else's orders, although he could be, yet his attitude does not appear to be one of someone acting under duress. As Nadia notes, Abu Batat "seemed to enjoy his job, stopping at certain rows to peer at the girls, singling out the ones who covered or pretended to be asleep."²⁵ While his actions were likely part of the plan to dehumanize the Yazidi women and girls prior to their sale as sex slaves, he clearly seemed to have the intent to harm them, and Nadia in particular. She notes that he groped her "hard as if he wanted to hurt me."²⁶ Later, when Nafah burns Nadia with a cigarette, Abu Batat is the one who hands him the lit cigarette. Nadia recalls his response to her suffering: "'She screams now, will she scream tomorrow?' Abu Batat said to the others. He wanted them to be even harsher with me. 'She needs to understand what she is and what she's here for.'"²⁷ Thus Abu Batat seems to meet all the conditions for blameworthiness, since he has indicated the ability to reflect on his interactions with Nadia and inflict further harm upon her in light of them. While we are in a limited epistemic position, we have no reason to think he is exempt or excused from blame for his behavior. The final question is the purpose of blame, and this raises the question of who counts as a member of our community. I doubt Nadia would want to consider Abu Batat a member of her community, but it seems that he was, at least for a time, part of her moral community due to

²⁵ Ibid., 181.

²⁶ Ibid., 183.

²⁷ Ibid., 193.

their interactions. His actions were reprehensible, resulting in the harm of many Yazidis just based on Nadia's account, and thus he should be blamed for his acts of groping and terror.

Nafah should be blamed similarly, although he does not actively grope anyone during Nadia's story. Yet he makes it clear that he is individually participating in a larger plan to enslave the Yazidi women and girls, and indicates that Abu Batat's actions are a necessary part of it. Nadia notes that he was "particularly cruel and harsh, shouting at us without an ounce of humanity,"²⁸ and he repeats that the Yazidis have no choice but to submit to the ownership of IS. Nafah also takes his own action to actively harm Nadia, burning her shoulder and stomach with a lit cigarette. As with Abu Batat, we have no indication that he is acting under duress, and his decision to burn Nadia reveals that he too has taken the time to reflect on her complaints about Abu Batat, and take action to ensure that she performs her subservient role without complaint in the future. Nafah is blameworthy for his individual acts that contribute to the dehumanization of Nadia.

Hajji Salman, the man to whom Nadia is initially sold, is blameworthy for his individual acts against Nadia, including his direction that she should be gang-raped following her failed escape attempt. He rapes her multiple times, forces her to be "married" to him, and restricts her movements. Again, the mass sexual slavery has been planned by IS, but the individual actions of Hajji Salman reflect his own belief that Nadia is not a human being, and he makes choices to treat her as he does. Nadia describes Hajji Salman as "the worst, in part because he was the first to rape me and in part because he acted the most like he hated me. He hit me if I tried to close my eyes. For him, it was not enough just to rape me—he humiliated me as often as he could, spreading honey on his toes and making me lick it off or forcing me

²⁸ Ibid., 185.

to dress up for him.”²⁹ According to Nadia, he seems to obtain and discard young Yazidi women regularly. While he does not exercise control over her for more than a few days, he treats Nadia as a slave by raping her and giving her specific instructions for how to dress and act, and then punishing her for insubordination by telling his guards to rape her as well. He is personally blameworthy for each of these actions.

Hajji Salman’s guards are also individually blameworthy for their actions in raping Nadia, although their moral responsibility could be slightly mitigated by their lower position within the structure of IS. Yet their actions when they are alone (or somewhat alone) with Nadia do not indicate that they act under duress. Nadia describes an earlier interaction with Morteja, for instance, by claiming that “[w]ithout Hajji Salman nearby, [Morteja] approached me with more authority, but it seemed put on, like a boy wearing his father’s shoes.”³⁰ When he rapes her as instructed by Hajji Salman, Nadia says he “acted like a child who had been allowed a treat he had been whining for.”³¹ Morteja had certainly been influenced and instructed by IS, and he wants to emulate those with more power in the organization, but this doesn’t take away from the choices he makes. We have less information about the other two guards, but Nadia does not experience any sympathy or remorse from either of these guards either. She recalls that one of the guards took off his glasses before raping her, and she says she “will never forget the other guard’s glasses, the way he was so gentle with them and so vicious with me, a person.”³² All three of the guards are blameworthy for their individual actions, since there is no evidence that they warrant excuse or exemption, and it is incumbent on the global moral community to condemn their actions.

²⁹ Ibid., 268.

³⁰ Ibid., 229.

³¹ Ibid., 268.

³² Ibid.

The IS militants at the checkpoint and Hajji Amer are similarly individually blameworthy for their assaults on Nadia and accompanying cruelty in the face of her sickness. But there is not much more to say about these men than has already been said about her other perpetrators, since these men also acted in private when they harmed Nadia. Thus I will close this section by briefly distinguishing these blameworthy individuals from one of the sons in the Sunni family that helped Nadia escape to Kurdistan. Nasser risked his own safety and that of his entire family by accompanying Nadia, with fake documents in hand, on her journey back to her own family. He was kind to Nadia while she stayed with his family, and then continually reflected on the dangerous situations they faced together on their journey, making the decision to proceed with their journey at every opportunity to turn back. Nasser had no special obligation to help Nadia, and his choices to help her, despite the risk, warrant robust praise from the global moral community.

5.4 Collective Responsibility for Group Acts

Collective responsibility as a general term associates moral agency with group agents rather than individual agents. It refers to the causal responsibility and blameworthiness of groups, where moral responsibility is located in the group, as a collective, rather than in the individual members of the group. Some argue that the concept of collective responsibility is meaningless, claiming that responsibility can only be attributed to individuals who have their own intentions and engage in their own discrete acts. Those who defend the possibility of collective responsibility claim that some intentions and acts, and corresponding blameworthiness, can fairly be attributed to groups. I have already adopted a view of collectives that groups can constitute agents, and here I argue that they can constitute moral agents. In Chapter Two, I endorse a hybrid view of groups, which permits me to attribute individual

responsibility to individual members of IS, while still attributing collective responsibility to group agents in this section. Not only does my view permit such dual attribution, but I claim that it is necessary in order to accurately capture all of the features of collective action.

Moral agency can exist for groups because they can act with a collective version of reflective self-control. They can share beliefs and intentions, which means they can share moral reasons for their joint actions. The internal self-reflection that is performed by individuals must occur externally in groups, and we can see it through internal records as well as public statements and publications put out by a group. While some would argue that group intention and action is nothing more than an aggregation of the intentions and actions of the individuals that make up the group, this ignores the social influence and interpersonal relationships within a group, which cannot be captured by mere aggregation. Thus we cannot fully capture the moral responsibility for groups by attributing it to its individual members.

I begin, of course, with IS. I argued in Chapter Two that IS is an organization that claims to act in accordance with one ideology, in service of its religious duty of spreading Islam and establishing an Islamic caliphate. We have significant evidence that most of the actions attributed to IS are part of a larger plan, but the evidence of plans for mass sexual slavery is particularly damning. Amal Clooney, in the forward to Nadia's book, explains as follows:

ISIS even released a pamphlet entitled Questions and Answers on Taking Captives and Slaves to provide more guidelines. "Question: Is it permissible to have intercourse with a female slave who has not reached puberty? Answer: It is permissible to have intercourse with the female slave who hasn't reached puberty if she is fit for intercourse. Question: Is it permissible to sell a female captive? Answer: It is permissible to buy, sell, or gift female captives and slaves, for they are merely property."³³

As a group, IS has a shared goal of exerting complete control over the Yazidi people, through

³³ Amal Clooney, forward to *The Last Girl*, 18.

extermination, conversion, and enslavement. The belief that they are infidels, and not worthy of the same respect as other human beings, justifies this shared goal for the members of IS. In this way, the “moral reasons” that IS has to reflect on are warped, but this misplaced motivation is not an excuse. The intent is to harm, and the belief that Yazidi women and girls are property instead of human beings cannot be justified. Individual militants perform distinct tasks in order to achieve this aim of complete control. The siege of Kocho, for instance, required the concerted and persistent actions of many IS militants, none of whom appeared to Nadia to show any resistance to the task they had been ordered to perform. There are more individual actors involved in the perpetration of mass sexual enslavement, as evidenced by the previous section, but the overall endeavor requires significant joint action. The drivers and the guards, the men purchasing the Yazidi women and girls, and the judges recording their property claims all play a role in supporting the joint endeavor. No one or two IS members could have designed and implemented such a scheme, and it requires joint intention and action in order to be successful. I noted quite a few named individuals in the last section, but most of the actors in Nadia’s story are nameless faces who played some small role in creating the conditions and logistics for her sexual enslavement. Thus the group IS is blameworthy in its capacity as a group moral agent.³⁴

As I noted in Chapter Two, there is a concern about how to address the individuals who are “members” of IS but do not share the aim of exerting control over all Yazidis, or who were only forced to convert to Islam and join IS under duress. I noted that this may place him outside of the we-mode analysis for purposes of the situations in which an individual IS

³⁴ Because I adopt a view of groups and individuals that utilizes both the I-mode and the we-mode, I see the attribution of individual and collective responsibility as something that occurs concurrently. Both are necessary because they capture different features of intention and action, and one does not reduce the need for the other.

member does not agree with the premise of the rest of the group. Had there been an IS militant in Kocho who wanted to force all Yazidis to convert to Islam, but who did not agree with mass sexual slavery, he may not be part of the collective that would be blameworthy. Yet at some point, if he knew that an outcome of his control over the Yazidis was the sexual enslavement of many women and girls, it would be hard to say that he had not participated in the joint action with at least a recklessness toward the joint intention of mass sexual enslavement. This is blameworthy, as it involves reflection on the outcome of one's choices, and a decision to proceed with conscious disregard for the consequences. With respect to the overall subjugation of the Yazidi people, a more challenging question is presented by the young Yazidi boys who were forced to convert to Islam and serve as human shields, suicide bombers, or militants. While the initial conditions of their group membership were coercive, it is their long-term integration into the group that will matter most in terms of responsibility. If they do not integrate and adopt the shared beliefs and intentions of the group, it is unlikely that an attribution of collective moral responsibility will be properly made to them. And with respect to the sexual slavery experienced by their mothers, sisters, and cousins, none of the Yazidi boys appear in Nadia's story as perpetrators.

The next collective to consider is the Kurdish government, which made the decision to withdraw the peshmerga at some point during the siege of Sinjar. When Mosul fell, the Kurdish government sent these Iraqi fighters to guard Kocho. Nadia explains that some Yazidis, including a few of her brothers, sought to receive training from the peshmerga so that the Yazidis could protect themselves. Instead, "[n]o one offered to train the Yazidi men or encourage them to join the fight against the terrorists. The peshmerga assured us that as long as they were there, we had nothing to worry about, and that they were as determined to protect

Yazidis as they were the capital of Iraqi Kurdistan.”³⁵ But instead they prevented the Yazidis who tried to leave from leaving, and eventually fled Sinjar as soon as IS militants arrived.

The collective intent of the Kurdish peshmerga is less clear than that of IS with respect to mass sexual enslavement of the Yazidis. It may have been that each individual fighter realized his life was in danger, and they all left out of the own self-interest. And if any individual fighters intended to stay, he would have been forced to leave if he acknowledged the great danger he faced alone, and his complete inability to protect the Yazidis without the rest of the group. But it seems more likely that the peshmerga acted in response to a group directive, based on a group belief about the impending danger and the group’s inability to stop it from happening. As the peshmerga are part of a military organization, the most likely scenario is that the Kurdish government ordered them to escape Sinjar before it became impossible due to the presence of IS militants. If this is the case, this means the Kurdish government acknowledged its obligation to protect the Yazidis after the fall of Mosul and then abandoned its duty as soon as it became clear that they might not be able to fulfill its duty to the Yazidis. It does seem that the peshmerga faced a serious challenge in the form of IS, and this may have exerted a significant amount of stress on the organization in deciding whether or not they should stay and fight. But it also seems that they were aware of what IS was likely to do to the Yazidi people, and they decided to cut and run anyway. Thus the peshmerga, as a group, maintain some level of collective moral responsibility for the sexual enslavement of Nadia and thousands of others. The group’s decision, at some level, to abandon Kocho and other parts of Sinjar was a necessary factor in the eventual harms that befell Nadia and many others.

³⁵ Murad and Krajeski, *The Last Girl*, 31.

Before turning to shared responsibility, I briefly consider the moral responsibility of Iraq and Syria. In the next section I will look at the moral responsibility of the international community, but Iraq and Syria had special obligations to prevent and stop the sexual enslavement of the Yazidis in their own territory. However, it seems that we should refrain from blaming these two states, as they might qualify for a collective excuse or exemption. The success of IS in 2014 meant that neither of these states had control over large parts of their territory, including Sinjar and Mosul. Iraqi and Syrian forces were already fighting IS in many places. Thus it seems that they might not be blameworthy for several reasons. First, it may have been that these states did not have an available option to protect or save the Yazidis. If their troops were otherwise engaged in fighting IS and were too depleted to come to Sinjar, then they could not have made a collective decision to do so. The Syrian and Iraqi governments may also qualify for a short-term exemption based on the extreme stress they were facing from IS (and other forces) at the time. Either way, there is a good argument to be made that there are good reasons to refrain from blaming these governments. As both of these countries try to rebuild from years of war, and the case for blaming is weak, we might think that we should be encouraging community-building instead of engaging in practices of blaming. Thus despite their unique responsibility to protect the Yazidi women and girls that were trafficked in their respective territories, we should refrain from blaming Iraq and Syria.

5.5 Shared Responsibility for Group Acts

Shared responsibility is an alternative form of group responsibility, and it requires a bit more explication than either individual or collective responsibility. The term refers to the concept of individual group members each being held partially responsible for harm that is caused by the group's actions. So we can think of the difference between collective and shared responsibility in

terms of distribution: collective responsibility applies blame to the group as a whole, while shared responsibility applies blame to individual members of the group. Even if we accept the possibility of group responsibility as collective responsibility, we might wonder if (and how) it is possible to fairly distribute blame among the individual members of a group. For our purposes, I will focus on shared responsibility for the failure to protect the Yazidi women and girls, especially for collectives that are not well-organized groups.

5.5.A An Account of Shared Responsibility

An attribution of collective responsibility relies on the identification of something over and above the individual contributions of each member of a group, but since shared responsibility is about the aggregation of individual responsibility, it can be used to understand responsibility within groups that are less cohesive. Thus it is particularly useful for situations in which a person made a “choice that contributed to a harm for which that person was then at least partially responsible.”³⁶ This tracks our earlier discussion of voluntariness, in that we can hold people at least partially responsible for choices made while maintaining the capacity for reflective self-control. But on my view, shared responsibility allows for us to hold individuals responsible for voluntary actions and attitudes that were not intended to cause the harm, or may not have directly caused the harm.

What is important for identifying a possible locus of shared responsibility is to look at whether “a collection of persons displays either the capacity for joint action or common interest.”³⁷ This capacity is located in the structure of the group rather than in the individuals, but this does not make the group exist independently of the individuals. Arguably, a “group” can exist based on the *capacity* of the individuals for joint action, not the actual shared commitments

³⁶ Larry May, *Sharing Responsibility* (Chicago: University of Chicago Press, 1992), 36. In my own view of shared responsibility, I draw significant resources from May’s view.

³⁷ *Ibid.*, 29-30.

and intentions. I am concerned here with putative groups created out of circumstance rather than shared interests. Take the example of a drowning child in view of a collection of bystanders on the shore, for instance, which I will refer to as *Beach*.³⁸ None of individuals who hear the drowning child are capable of saving her on their own, but should they be obligated to coordinate amongst themselves to facilitate a rescue attempt? We might think not, since in this sort of emergency they do not necessarily have the time to coordinate amongst themselves. We can contrast this example of a drowning emergency with a famine (which I will call *Famine*), a situation in which there is more time for a putative group of individuals (or institutions) to develop the mechanisms necessary to coordinate group action.³⁹ A putative group in this case could be held collectively responsible for failing to coordinate and failing to prevent harm, and as we turn to now, individually responsible for failing to prevent harm. Shared responsibility, however, does not rely on the existence of a group, since it is based on the aggregation of individual responsibility.

When responsibility is shared, individual responsibility should be divided fairly among the various actors, but not necessarily equally. Both individual and collective responsibility for inaction should acknowledge capacity, since “some persons in [a] collective may be able, because of their various leadership skills, to be more effective in bringing these people to form a group able to act intentionally.”⁴⁰ Thus an individual who could have used leadership skills to prevent harm should have a greater share of responsibility than those who were only capable of following orders. In *Beach*, a CEO is likely more responsible than a teenager for failing to coordinate the pair of former Olympic swimmers to work together to save the drowning child. And *Famine*, it may be that relief organizations with experience responding to large-scale crises

³⁸ See *ibid.*, 110-11.

³⁹ See *ibid.*, 111.

⁴⁰ *Ibid.*

receive more blame for the continued harm than a new nation-state with few resources. Individuals should be required to do as much as they are capable of doing, which is based on an assessment of an individual's capacity, and which does not change in relation to the capacities of the other individuals in the putative group.

The concept of shared responsibility is important because it provides a mechanism for holding individuals responsible for inaction in situations where they could have prevented harm by coordinating with other, similarly situated individuals. So an account of shared responsibility for collective inaction should be focused on inspiring and motivating individuals to be better. Yet most accounts of collective responsibility and for shared responsibility for collective inaction are retrospective, in that they take a particular harm and attempt to identify who (or what) can be held responsible for the harm.⁴¹ It is easy to see why this is appealing: it allows us to create the kinds of counterfactuals that are necessary in order to generate responsibility for inaction. While we are not in an epistemic position to know exactly what was possible, we can know certain features of the individuals who failed to act, and we know the extent of the harm that occurred, and this can allow us to work backwards to create various counterfactuals. But this retrospective look at collective inaction does not provide the same motivation as a forward-looking view of shared responsibility. Forward-looking responsibility establishes what individuals or other entities *should* be doing, not what they should have done in the past. Particularly when we think about ongoing crises like the one in *Famine*, there is good reason to think that future harm can be prevented, and focusing on past collective inaction does not necessarily motivate anyone to mitigate the ongoing harm. Forward-looking responsibility can get us to the same sort of analysis

⁴¹ See, e.g., Virginia Held, "Can a Random Collection of Individuals Be Morally Responsible?," *Journal of Philosophy* 68, no. 14 (1970); David Copp, "Responsibility for Collective Inaction," *Journal of Social Philosophy* 22, no. 2 (1991); Torbjörn Tännsjö, "The Myth of Innocence: On Collective Responsibility and Collective Punishment," *Philosophical Papers* 36, no. 2 (2007); Björn Petersson, "Collective Omissions and Responsibility," *Philosophical Papers* 37, no. 2 (2008); May, *Shared Responsibility*.

we do when we try to create a counterfactual to establish if a collective of individuals should have been expected to organize themselves into a group to prevent harm. However, it can use the tools that are immediately available and give normative force to the moral responsibilities that are determined by the analysis. This means we are focused on achieving particular states of affairs, i.e. a world/nation/community with less suffering, rather than merely designating which entities will be blamed if these states of affairs do not materialize.

Tracy Isaacs offers such a forward-looking view of collective inaction, which she refers to as “collective obligation” to distinguish from backward-looking “collective responsibility.”⁴² She gives her own example of a case in which several individual bystanders should work together to prevent harm to some children rafting nearby, and she goes on to argue that we should be focusing on our current and future “obligations” to perform particular acts. She frames responsibility as a prescriptive rather than an evaluative concept. Yet Isaacs is limited in her own ability to be prescriptive as well because she is focused on collective obligations, rather than individual obligations as parts of a shared collective obligation. She claims that individual responsibility in collective contexts can only be understood in terms of collective responsibility, and she sees “no necessary connection between collective blameworthiness and individual blameworthiness.”⁴³ Isaacs does see collective obligation as providing a useful framework for understanding individual failures to act, especially in terms of what role an individual might take in a potential response to harm. We agree that with respect to collective action, “certain individuals are in a better position than others to direct the actions of the collective and to see that the collective’s intention actions are consistent with its obligations as a collective.”⁴⁴ It is

⁴² Tracy Lynn Isaacs, *Moral Responsibility in Collective Contexts* (Oxford University Press, 2011); Tracy Isaacs, “Collective Responsibility and Collective Obligation,” *Midwest Studies in Philosophy* 38 (2014).

⁴³ Isaacs, “Collective Responsibility and Collective Obligation,” 43.

⁴⁴ Isaacs, *Moral Responsibility in Collective Contexts*, 134.

true that we can't understand collective inaction from a purely individualistic perspective, and individuals should be expected to engage in collective action based on their own abilities. But her focus on the collective is too attenuated to be properly motivating. It looks like any given individual might be able to eschew her obligations, and the collective would have the same obligation to prevent future harm, only the roles would have to be redistributed among the group members. The individual could ostensibly avoid her individual obligation by removing herself from the putative group prior to an assessment of the collective obligation. The obligation should be *shared* between the individuals, where each is blameworthy for failing to fulfill her obligation.

We might think that given the relative moral weight of a failure to intervene to prevent harm, shame might be a more appropriate reactive attitude than blame, to reflect a less accusatory assessment. If we take a forward-looking view of shared responsibility, then neither blame nor shame will be directly applicable, simply because they are reactive. But we can still look at the difference between these two attitudes to track what is motivating about avoiding one or both of them as a reaction to one's inaction. We can distinguish between guilt, which is a feeling associated with an act or failure to act, from shame, which focuses on feelings about one's character. Bernard Williams distinguishes between guilt and shame as follows:

What arouses guilt in an agent is an act or omission of a sort that typically elicits from other people anger, resentment, or indignation. What the agent may offer in order to turn this away is reparation; he may also fear punishment or may inflict it on himself. What arouses shame, on the other hand, is something that typically elicits from others contempt or derision or avoidance. This may equally be an act or omission, but it need not be: it may be some failing or defect. It will lower the agent's self-respect and diminish him in his own eyes.⁴⁵

⁴⁵ Bernard Williams, *Shame and Necessity* (Berkeley: University of California Press, 2008), 90.

So while guilt is tied to something done (or not done), shame attaches to an assessment of one's identity. As Williams notes, guilt can be tied to reparation, or some other accounting for one's behavior. Shame, it seems, looks inwardly and is not tied to making changes outside of oneself.

If we think about holding individuals partially responsible for, say, maintaining racist or sexist attitudes that increase the risk of harmful behavior on the part of others, shame may be an appropriate reactive attitude. When considering individual responsibility for this sort of collective inaction, which is tied to one's identity, it makes sense to look inwardly and see racist attitudes as character defects. This is accurate, regardless of whether or not such self-awareness is motivating enough to encourage change. But it is not sufficient, and to rely on this internal self-assessment is to deny the power of accountability, and deny the moral weight of making a choice not to intervene to prevent harm. Guilt is a powerful (albeit backward-looking) tool for acknowledging that one should have acted differently, and provides the opportunity and obligation to improve the state of affairs. It motivates one to make a different choice the next time in order to prevent harm. And when we try to translate this to a forward-looking view of shared responsibility, it encourages us to look at how the choices we make affect other people, and how we might be obligated to prevent harm at some point. Returning to Isaacs' term "collective obligation," it seems that we should look at our responsibilities to prevent harm as obligations in the first place, rather than failed responsibilities after-the-fact, and the concept of guilt is better suited to encourage that way of looking at collective inaction. Whether or not shame generates an obligation to become a less defective person, it does not require us to create better states of affairs, and this should be a necessary feature of accountability.

5.5B Failure to Prevent Harm to Yazidi Women and Girls

In this final sub-section, we return to Nadia's case study and identify three different instances in which a putative group failed to act collectively to protect the Yazidi women and girls, or to prevent future harm to them. At the outset, we might (generously) concede that the timing around the initial siege of Sinjar made the case of the Yazidis more like *Beach* than *Famine*. It would have been quite challenging for anyone to assess the situation and put a stop to it. But this contains three instances of generosity, only one of which is plausibly warranted. First, it assumes that the initial two week time period between the beginning of the siege of Sinjar and the siege of Kocho was not enough time for anyone organize to intervene. This is plausible, but seems like a weak argument. Second, this assumes that the Yazidi people started "drowning" out of nowhere, which is certainly not the case. The peshmerga, for instance, had been in the region for two months. And third, this assumes that once the Yazidis "drowned," there was nothing that could be done to prevent further drowning. This, too, seems implausible, given that the sexual enslavement of the Yazidi women and girls was ongoing, and may still be happening today. Thus our case study seems much more similar to *Famine*. There is an ongoing crisis, during which significant harm has already occurred. Because the harm is ongoing, there is time for the putative group members to organize themselves into a collective, make decisions, and prevent future harm.

The first putative group we consider as a potential site of shared moral responsibility is the Sunni Arabs. Nadia notes from the very first page of her book that the Yazidis in Sinjar lived close to many Sunni Arabs, and that while historically they had coexisted peacefully, the fighting in Iraq in recent years had strained their relationships. Sunni Arabs had lost power in Iraq following the war that left a Shiite government in control, and they had lost influence in

Sinjar as the Kurds had grown in strength. When IS began growing in strength, their fundamentalist message found sympathizers in the Sunni Arab communities. Nadia and her family “learned that many of [their] Sunni Arab neighbors welcomed the militants and even joined them, blocking roads to stop Yazidis from reaching safety, allowing the terrorists to capture all non-Sunnis who failed to escape from the villages closest to Kocho, then looting the vacant Yazidi villages alongside the terrorists.”⁴⁶ She notes the stark difference between the Sunni Arabs and the Iraqi Kurds, most of whom are Sunni, who drove to meet fleeing Yazidis, delivering supplies and opening their homes. Nadia describes her Sunni Arab neighbors as their “last hope for outside help,” as the genocide of the Yazidis unfolded and her family was trapped in their home in Kocho. They did not help, and Nadia saw this as a betrayal:

Our Sunni neighbors could have come to us and tried to help. If they knew what was going to happen to the women, they could have dressed us all in black and taken us with them. They could have just come and told us, matter-of-factly, “This is what will happen to you,” so we could stop fantasizing about being rescued. But they didn’t. They made the decision to do nothing, and their betrayals were like bullets before the real bullets came.⁴⁷

Thus Nadia and other Yazidi women and girls might have been saved from harm if their Sunni Arab neighbors had acted differently.

At first glance, we might think that the Sunni Arabs are a group already. Yet it is not clear that the delineation Nadia makes, which is her “neighbors,” refers to an organized group. It is more likely that her Sunni neighbors had some shared intentions and beliefs, but it is unlikely that they all had a plan in place to allow harm to come to the Yazidis. What is more likely is that they had an idea of what was about to happen to the Yazidi women and girls, and they were not motivated to act together to prevent harm from coming to the Yazidis. A single

⁴⁶ Murad and Krajeski, *The Last Girl*, 91.

⁴⁷ *Ibid.*, 106.

family of Sunni Arabs could not have saved all of the Yazidi women and girls. It is unlikely that they even could have saved all the women and girls in Nadia's family. But if the Sunni Arabs with relationships to the Yazidi community had worked together, they may have been able to construct a plan to save some of all of the women and girls. These individuals would be hard-pressed to say that they lacked the capacity to organize themselves. The bigger question is whether they should have been willing to take the risk that preventing harm to the Yazidis would have entailed, and based on the harms described in this chapter and in Chapter Three, and their (prior) special relationship with the Yazidis, it is clear that they should have done something.

Each individual Sunni Arab, however, would share responsibility based on her own capacity. Sunni Arabs who ignored direct appeals from Yazidis for help, and who had the financial resources to help would be more responsible than, say, a Sunni Arab acquaintance living on a family member's couch and with none of his own resources. A community leader is more responsible for failing to organize the community to save Yazidi women and girls than a recent transplant with few social skills. But this is the sort of failure to act that should result in a distribution of responsibility among the various individuals who could have done something to change the outcome for Yazidis, and some amount of blame for each. The Sunni Arabs provide a good example of why we should think of shared responsibility as forward-looking: if this putative group had felt an obligation, they may have acted differently, which could have resulted in a better outcome for the Yazidis.

The second putative group is women who are affiliated with IS in some way. This, too, refers to a delineation that we might think is already organized, but which is more likely to be individuals that have the *capacity* to easily organize. Nadia is struck by her interaction with

Morteja's mother and wonders how she could have so little sympathy toward Nadia and other Yazidis like her. Nadia expresses hatred for the woman because she had let Mosul be taken over by IS militants, men who erased women from public life. She understood that men joined IS for sex, money, and power, but she could not understand "why a woman would join the jihadists and openly celebrate the enslavement of girls the way Morteja's mother did. Any woman in Iraq, no matter her religion, had to struggle for everything. Seats in parliament, reproductive rights, positions at universities—all these were the results of long battles. Men were content to stay in power, so power had to be taken from them by strong women."⁴⁸ So Nadia saw the women of IS as complicit in the violence enacted by their husbands and brothers, but she also thought they had an obligation to fight back.

This putative group seems less likely to be blameworthy for failing to prevent harm. If we think about the global community, it might be that the women of IS are blameworthy for their complicity in helping their male colleagues carry out atrocities, and perhaps for sharing their attitudes about the inhumanity of the Yazidis. But there is no reason why they were obligated to save the Yazidi women and girls, especially because it does not appear that they would have been in a position to do so. As members of the perpetrator group, even if these women were questioning the acts of the IS militants, they could not have organized themselves to act to prevent harm to the Yazidis because it would have been too dangerous for them to even suggest the organization to the other women. IS is an organization that shows little respect even for its own women, so many of the women associated with IS "voluntarily" may be victims of violence. It does not seem plausible that these women would have the capacity to organize themselves to protect the Yazidis, and thus the blame for failing to do so

⁴⁸ Ibid., 226.

cannot be shared by the individual women. These women might be better candidates for the reactive attitude of shame, but that is outside our scope here.

Finally, we can consider the shared moral responsibility of the international community. One might argue that the international community is not a putative group either, but is instead a well-organized group with clear structures in place to enable the immediate rescue of any “drowning children.” The Responsibility to Protect doctrine, endorsed by all member states of the U.N. in 2005, imposes an obligation to protect all populations from human rights violations and mass atrocity, and it provides a framework for the use of force through the U.N. Security Council. Thus one way of looking at the shared responsibility of the international community is to identify the members of the U.N. Security Council as a group, and then determine whether the group failed to prevent harm. On this view, it seems they have failed, since the U.N. Security Council did not intervene to protect the Yazidis despite the information that was publicly available about the atrocities being committed. They did pass a resolution in September 2017 providing support to the Iraqi government in the collection and preservation of evidence of crimes against the Yazidis. Yet assistance with accountability is not the same as intervening to prevent more harm. The existence of the Responsibility to Protect frames this as a forward-looking collective obligation, and the group members should be blamed for failing to meet this obligation. The U.N. Security Council could be held responsible as a collective, and the permanent members would share responsibility, all for failing to prevent harm to the Yazidi women and girls.

We can also see the larger international community as a putative group, which can include the permanent members of the U.N. Security Council (since working through the U.N. is not their only option for preventing harm). Because the harm was (arguably is) ongoing,

there has been time for members of the international community to organize themselves into a collective aimed at fulfilling the promise of the Responsibility to Protect doctrine, make decisions, and prevent future harm. Again, the goal of shared responsibility should be to generate better outcomes, and assuming that IS could have been stopped from selling and enslaving Yazidi women and girls at some point, a better state of affairs will be achieved by collective action (even if, to recognize the real-life complexity of the situation, the group makes a decision to “act” but in a way other than through military intervention). Backward-looking responsibility for failures to intervene incentivizes waiting to see what happens, and provides an opportunity to actually rely on epistemic gaps to explain the reasons for inaction. Forward-looking responsibility encourages thoughtful weighing of information and options, but generates an obligation to avoid the worst outcomes, which in this case seem to be the continuation of the unwarranted violence. Entities like international organizations and nation states are even less likely than individual persons to have their behavior changed by something akin to shame, such as external (or even internal) criticism of the nature of national identity. The potential for guilt, which would demand that entities get involved after-the-fact to make up for their failure to intervene, should encourage collective action at the outset instead. And as I have already noted, the harms that could have been prevented are serious enough to risk the lives and well-being of individuals from the entities that would make up this group. So each state should be partially blamed, based on its ability to contribute to the collective effort at preventing harm to the Yazidi women and girls. The result of this collective inaction has been that more suffering occurred, and blaming these states might encourage them to establish different values or policies to ensure that this sort of inaction did not happen in the future.

In this chapter, I used the conceptual work from the previous chapters to construct models of responsibility for the mass sexual enslavement of Yazidi women and girls. I used the story of Nadia Murad, a young Yazidi woman, to identify the representative sorts of individuals and groups that could be blamed for their actions. I also constructed a view of shared responsibility that would allow us to share responsibility among the members of putative groups for their failure to act, or their failure to constitute a group that could have acted to prevent harm. My aim has been to identify responsibility looking backwards, with the hope that in the future, individuals and entities will see an obligation to protect vulnerable populations as a forward-looking obligation. This will, I hope, result in a better state of affairs.

CONCLUSION

It has been three and a half years since IS attacked the Yazidi communities in the Sinjar region. It is estimated that several thousand Yazidi women and girls remain held by IS, despite the group's significant territorial losses in recent months. For those who survived and escaped, many have not returned to their former communities in Sinjar, instead opting to apply for asylum in Europe and elsewhere around the world. In Iraq, as shown in Nadia's story, "there has been a complete breakdown of trust between the Yazidi community and their neighbours."¹ It has been reported that survivors often recount the action (and inaction) of Arab families who assisted IS in (and failed to prevent IS from) committing atrocities against the Yazidis.² The Yazidis have also expressed significant anger toward the Kurdish government, "flowing from the unannounced withdrawal of the Peshmerga from Sinjar as ISIS advanced."³ Finally, there is "a sense of profound disappointment with the international community. While there is support for organizations doing humanitarian work in IDP camps and, abroad, refugee camps, it is perceived that, at best, there is a paralysis, and, at worst, a reluctance regarding the taking of any action to rescue Yazidis still held by ISIS."⁴

While the ongoing plight of the Yazidis appears to be unique in its severity and scope, the strategy of the perpetrators is unfortunately representative of the new face of "rape as a weapon of war," justified by religious doctrine. In the 1990s and early 2000, Algerian insurgents used the religious laws on sex and marriage to force women and girls to "temporarily marry [the]

¹ U.N. Human Rights Council, "*They came to destroy*": *ISIS Crimes Against the Yazidis*, U.N. Doc. A/HRC/32/CRP.2, 15 June 2016, 34, para. 184.

² Ibid.

³ Ibid., para. 185.

⁴ Ibid., para. 186.

insurgents before being discarded once the husbands' conjugal rights had been satisfied."⁵ Boko Haram, which is loyal to IS, captured over 276 schoolgirls in April of 2014, many of whom have reportedly been used as sex slaves for militants.⁶ Some have escaped or been freed in the months since their abduction, but as many as 112 may still be held by Boko Haram.⁷ The prospect of rape and sexual slavery, justified and even encouraged by religious ideology, has been used by IS and Boko Haram as a recruiting tactic.⁸ Given its success in attracting young men, there is no indication that the groups will stop using sexual slavery as a tactic of terrorism and recruitment. My aim here has been to take this problem and use philosophical tools to analyze how we should think about it, both now and when new situations arise.

In Chapter Two, I explored what it means to be a group or a member of a group, considering the spectrum of views between individualist and collectivist accounts. I adopted a hybrid view that recognizes both the shared and individual identities of group members, so that the group is something more than the aggregate of the individuals. A perpetrator group like IS, for example, begins with a shared ideology and shared interests, but members join the group for a variety of reasons. Considering what it means to be an individual member of IS allows me to rule out a purely collectivist view of groups, since individual agency within a group varies widely. But the group ideology and organizational hierarchy limit my view from dissolving into a reductionist individualism. With respect to victim groups, like the Yazidi women and girls, the focus is more on wrongs perpetrated against the individual victims on

⁵ Jonathan N.C. Hill, "Boko Haram, the Chibok Abductions and Nigeria's Counterterrorism Strategy," *Combatting Terrorism Center at West Point* 7, no. 7 (2014); Marina Lazreg, "Consequences of Political Liberalisation and Sociocultural Mobilisation for Women in Algeria, Egypt and Jordan," in *Governing Women: Women's Political Effectiveness in Contexts of Democratization and Governance Reform*, ed. Anne Marie Goetz (New York: Routledge, 2009).

⁶ Dionne Searcey, "Nigeria Rescues Another Student from 2014 Chibok Kidnapping," *The New York Times*, January 4, 2018.

⁷ Ibid.

⁸ Mark Townsend, "Rape and Slavery Was Lure for U.K. ISIS Recruits with History of Sexual Violence," *The Guardian*, October 7, 2017.

the basis of their group identity. Some aspects of the victim experience will be shared, while others are based on individual circumstances, so I again embraced a view that acknowledges both the individual and social aspects of an individual member who is part of a group.

In Chapter Three, I used Grotius' claim that defense of life and chastity are the main justified causes for the use of force as a jumping off point to consider the harm of mass sexual slavery. Historically, injury to an individual woman's chastity constituted an injury to the honor of her male family members, in addition to her own honor. I argue that this is the wrong place to locate the objective harm of sexual slavery. Sexual slavery is an injury to well-being, and I adopted a view of well-being that identifies at least some objective aspects of well-being, including a right to bodily integrity and freedom of movement. My view relied on the preference-based account of well-being for individuals and an objective list account for groups. But while the harm of sexual slavery may involve both subjective and objective injury, the *wrongdoing* is about the actions of the perpetrator, not the experience of the victim. Accordingly, I argued for a distinction between harm and wrongdoing, as the harm experienced by any individual Yazidi or the group as a whole does not generate what is objectively wrong about a perpetrator's actions.

In Chapter Four, I attempted to classify IS as a non-state actor by analyzing the concept of statehood from political, religious, and legal perspectives. I considered statehood in terms of authority and recognition, adopting a view that requires both features in terms of political and legal requirements. I conclude that while IS maintained political control over some territory and garnered recognition from some other political actors during the height of its power, it still likely failed to constitute a state. Regardless of its status, however, IS failed

to meet certain obligations toward individuals and communities by engaging in widespread campaigns of terror and violence.

Finally, in Chapter Five, I used my previously-defended views of perpetrator and victim groups, the harm of sexual slavery, and IS as a non-state actor to answer moral questions about how to assess responsibility for the harms suffered by Yazidi women and girls. I used the case study of Nadia Murad, a Yazidi survivor of sexual slavery at the hands of IS, to build a case for individual, collective, and shared responsibility. I focused on the members of IS and their collaborators in arguing for widespread but varied levels of individual and collective responsibility. I then defended a view of shared responsibility for the Yazidi's neighbors and members of the international community, all of whom failed to act collectively to prevent past and ongoing harms to Yazidi women and girls. By suggesting that we adopt a forward-looking view of shared responsibility, it is my hope that we can reduce the harm caused by ideologically-driven terrorist groups in the future. If many individuals and members of the international community feel a collective obligation to intervene, instead of looking on as helpless bystanders, the future may hold fewer instances of mass sexual slavery.

REFERENCES

- “2015 Global Terrorism Index: Deaths from Terrorism Increased 80% Last Year to the Highest Level Ever; Global Economic Cost of Terrorism Reached All-Time High at US\$52.9 Billion.” *PR Newswire*, November 16, 2015.
- Afsaruddin, Asma. “The Siyar Laws of Aggression: Juridical Re-Interpretations of Qur’ānic Jihād and Their Contemporary Implications for International Law.” In *Islam and International Law: Engaging Self-Centrism from a Plurality of Perspectives*, edited by Marie-Luisa Frick and Andreas Th Müller, 45-63. Leiden: Martinus Nijhoff Publishers, 2013.
- Ahmed, Dawood I., and Moamen Gouda. “Measuring Constitutional Islamization: The Islamic Constitutions Index.” *Hastings International and Comparative Law Review* 38 (2015).
- Ahram, Ariel I. “Sexual Violence and the Making of ISIS.” *Survival* 57, no. 3 (2015).
- Al-Dawoody, Ahmed. *The Islamic Law of War: Justifications and Regulations*. New York, NY: Palgrave Macmillan, 2011.
- American Law Institute. “Restatement (Third) of the Foreign Relations Law of the United States.” 1987.
- Aristotle. *Nicomachean Ethics*. Chicago: The University of Chicago Press, 2011.
- Askin, Kelly D. “Prosecuting Wartime Rape and Other Gender-Related Crimes under International Law: Extraordinary Advances, Enduring Obstacles.” *Berkeley Journal of International Law* 21 (2003): 288.
- Austin, J. L. “A Plea for Excuses.” In J. L. Austin’s *Philosophical Papers*, by J. L. Austin, edited by J. O. Urmson and G. J. Warnock, 3rd ed., 175-204. Oxford: Oxford University Press, 1979.
- Bailes, Alyson J. K. “Legal Precision or Fuzzy Feelings? A Diplomatic Comment on Recognition Studies.” In *Recognition in International Relations: Rethinking a Political Concept in a Global Context*, edited by Christopher Daase, Caroline Fehl, Anna Geis and Georgios Kolliarakis. New York: Palgrave Macmillan, 2015.
- Bassiouni, M. Cherif. “Evolving Approaches to Jihad: From Self-Defense to Revolutionary and Regime-Change Political Violence.” *Journal of Islamic Law and Culture* 10, no. 1 (2008): 61-80.
- . *The Sharī‘a and Islamic Criminal Justice in Time of War and Peace*. New York: Cambridge University Press, 2014.
- Beaulac, Stéphane. *The Power of Language in the Making of International Law: The Word Sovereignty in Bodin and Vattel and the Myth of Westphalia*. Leiden: Martinus Nijhoff Publishers, 2004.
- Belanger-McMurdo, Adele. “A Fight for Statehood? ISIS and Its Quest for Political Domination.” *E-International Relations* (2015).
- Blix, Hans. *Contemporary Aspects of Recognition*. Vol. 130 Académie De Droit International. Recueil Des Cours. Leiden: Martinus Nijhoff, 1970.
- Bodin, Jean. *The Six Bookes of a Commonweale*. Translated by Richard Knolle. London: Impensis G. Bishop, 1606.
- Brandom, Robert B. “The Structure of Desire and Recognition: Self-Consciousness and Self-Constitution.” *Philosophy & Social Criticism* 33, no. 1 (2007): 127-50.

- Broms, Bengt. "States." In *International Law: Achievements and Prospects*, edited by Mohammed Bedjaoui. Dordrecht: Martinus Nijhoff Publishers, 1991.
- Buchanan, Allen. "Recognitional Legitimacy and the State System." *Philosophy & Public Affairs* 28, no. 1 (1999): 46-78.
- Bykvist, Krister. "Preference-Based Views of Well-Being." In *The Oxford Handbook of Well-Being and Public Policy*, edited by Matthew D. Adler and Marc Fleurbaey. Oxford: Oxford University Press, 2016.
- Callimachi, Rukmini. "ISIS Enshrines a Theology of Rape." *The New York Times*, August 13, 2015.
- Card, Claudia. *The Atrocity Paradigm: A Theory of Evil*. Oxford: Oxford University Press, 2002.
- . "Genocide and Social Death." *Hypatia* 18, no. 1 (2003): 63-79.
- Clooney, Amal. Forward to *The Last Girl: My Story of Captivity, and My Fight against the Islamic State*, by Nadia Murad and Jenna Krajeski. New York: Tim Duggan Books, 2017.
- Cockburn, Patrick. "Preview 2018: After a String of Defeats in Iraq and Syria What 2018 Means for ISIS." *Independent*, January 1, 2018.
- Cohen, Jean L. *Globalization and Sovereignty: Rethinking Legality, Legitimacy and Constitutionalism*. Cambridge: Cambridge University Press, 2012.
- Copp, David. "Responsibility for Collective Inaction." *Journal of Social Philosophy* 22, no. 2 (1991): 71-80.
- . "What Collectives Are: Agency, Individualism and Legal Theory." *Dialogue: Canadian Philosophical Review/Revue canadienne de philosophie* 23, no. 2 (1984): 249-69.
- Crawford, James. *The Creation of States in International Law*. Oxford: Oxford University Press, 2007.
- Cronin, Audrey Kurth. "ISIS Is Not a Terrorist Group." *Foreign Affairs* 94, no. 2 (2015): 87-98.
- Dennett, Daniel C. *Elbow Room: The Varieties of Free Will Worth Wanting*. Cambridge, MA: MIT Press, 1984.
- Dugard, John, and David Raič. "The Role of Recognition in the Law and Practice of Secession." In *Secession: International Law Perspectives*, edited by Marcelo G. Kohen. Cambridge: Cambridge University Press, 2006.
- Durkheim, Emile, and Steven Lukes. *The Rules of Sociological Method*. Translated by W. D. Halls. 2nd ed. Hampshire: Palgrave Macmillan, 2013.
- Emmerson, Ben (Special Rapporteur). *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*. U.N. Doc. A/HRC/29/51, 16 June 2015.
- Epstein, Brian. "What Are Social Groups? Their Metaphysics and How to Classify Them." *Synthese* (2017): 1-34.
- Estlund, David M. *Democratic Authority: A Philosophical Framework*. Princeton, N.J.: Princeton University Press, 2008.
- Feinberg, Joel. *Harm to Others*. Oxford: Oxford University Press, 1984.
- Fletcher, Laurel, Allyn Taylor, and Joan Fitzpatrick. "Human Rights Violations against Women." *Whittier Law Review* 15 (1994): 319.

- Ford, Christopher A. "Siyar-Ization and Its Discontents: International Law and Islam's Constitutional Crisis." *Texas International Law Journal* 30 (1995): 499.
- Fowler, Michael Ross, and Julie Marie Bunck. "What Constitutes the Sovereign State?". *Review of International Studies* 22, no. 4 (1996): 381-404.
- Gilbert, Margaret. "Belief and Acceptance as Features of Groups." *Protosociology* 16 (2002): 35-69.
- . *Joint Commitment: How We Make the Social World*. New York: Oxford University Press, 2014.
- . *Living Together: Rationality, Sociality, and Obligation*. Lanham, MD: Rowman & Littlefield, 1996.
- . "Modelling Collective Belief." *Synthese* 73, no. 1 (1987): 185-204.
- . "Obligation and Joint Commitment." *Utilitas* 11, no. 2 (1999): 143-63.
- . *On Social Facts*. New York: Routledge, 1989.
- . *Sociality and Responsibility: New Essays in Plural Subject Theory*. Lanham, MD: Rowman & Littlefield, 2000.
- . *A Theory of Political Obligation: Membership, Commitment, and the Bonds of Society*. New York: Oxford University Press, 2006.
- . "What Is It for Us to Intend?". In *Contemporary Action Theory Volume II: Social Action*, edited by Ghita Holmström-Hintikka and Raimo Tuomela, 65-86. Dordrecht: Kluwer Academic Publishers, 1997.
- Grant, Thomas D. *The Recognition of States: Law and Practice in Debate and Evolution*. Westport, CT: Greenwood Publishing Group, 1999.
- Grotius, Hugo. *De Jure Belli ac Pacis* [The Rights of War and Peace] (1625). Translated by Richard Tuck. Indianapolis, Ind.: Liberty Fund, 2005.
- Hart, H. L. A. *The Concept of Law*. 2nd ed. Oxford: Clarendon Press, 1994.
- Hashmi, Sohail H., and James Johnson. "Introduction." In *Just Wars, Holy Wars, and Jihads: Christian, Jewish, and Muslim Encounters and Exchanges*, edited by Sohail H. Hashmi. New York: Oxford University Press, 2012.
- Haybron, Daniel M. "Mental State Approaches to Well-Being." In *The Oxford Handbook of Well-Being and Public Policy*, edited by Matthew D. Adler and Marc Fleurbaey. Oxford: Oxford University Press, 2016.
- Hegel, G.W.F. *Phenomenology of Spirit*. Translated by A.V. Miller. Oxford: Oxford University Press, 1977.
- . *Philosophy of Right*. Translated by S.W. Dyde. Kitchener: Batoche Books, 2001.
- Held, Virginia. "Can a Random Collection of Individuals Be Morally Responsible?". *Journal of Philosophy* 68, no. 14 (1970): 471-81.
- Hill, Jonathan N.C. "Boko Haram, the Chibok Abductions and Nigeria's Counterterrorism Strategy." *Combatting Terrorism Center at West Point* 7, no. 7 (2014): 15-17.
- Hindriks, Frank. Review of *Social Ontology: Collective Intentionality and Group Agents* by Raimo Tuomela. *Economics and Philosophy* 31, no. 2 (2015): 341-48.
- Hobbes, Thomas. *Leviathan*. Oxford World's Classics. Oxford: Oxford University Press, 1998.
- Hurka, Thomas. "Objective Goods." In *The Oxford Handbook of Well-Being and Public Policy*, edited by Matthew D. Adler and Marc Fleurbaey. Oxford: Oxford University Press, 2016.

- Ikäheimo, Heikki. "On the Genus and Species of Recognition." *Inquiry* 45, no. 4 (2002): 447-62.
- International Court of Justice. *The Western Sahara*. Advisory Opinion, 16 October 1975.
- Isaacs, Tracy. "Collective Responsibility and Collective Obligation." *Midwest Studies in Philosophy* 38 (2014): 40-57.
- Isaacs, Tracy Lynn. *Moral Responsibility in Collective Contexts*. Oxford University Press, 2011.
- Jabareen, Yosef. "The Emerging Islamic State: Terror, Territoriality, and the Agenda of Social Transformation." *Geoforum* 58 (2015): 51-55.
- Kelsay, John. *Islam and War: A Study in Comparative Ethics*. Louisville, KY: Westminster/John Knox Press, 1993.
- Kelsen, Hans. "Recognition in International Law." *American Journal of International Law* 35, no. 4 (1941): 605-17.
- Khadduri, Majid. *The Islamic Conception of Justice*. Baltimore: Johns Hopkins University Press, 1984.
- . *War and Peace in the Law of Islam*. Clark, N.J.: The Lawbook Exchange, 2006.
- Knop, Karen. "Statehood: Territory, People, Government." In *The Cambridge Companion to International Law*, edited by James Crawford and Martti Koskenniemi. Cambridge: Cambridge University Press, 2012.
- Kolliarakis, Georgios. "Recognition as a Second-Order Problem in the Resolution of Self-Determination Conflicts." In *Recognition in International Relations*, edited by Christopher Daase, Caroline Fehl, Anna Geis and Georgios Kolliarakis, 178-96. New York: Palgrave Macmillan, 2015.
- Laitinen, Arto. "On the Scope of "Recognition": The Role of Adequate Regard and Mutuality." In *The Philosophy of Recognition: Historical and Contemporary Perspectives*, edited by Hans-Christoph Schmidt am Busch and Christopher F. Zurn, 319-42. Plymouth, UK: Lexington Books, 2010.
- Lauterpacht, Hersch. "Recognition of States in International Law." *The Yale Law Journal* 53, no. 3 (1944): 385-458.
- Lazreg, Marina. "Consequences of Political Liberalisation and Sociocultural Mobilisation for Women in Algeria, Egypt and Jordan." In *Governing Women: Women's Political Effectiveness in Contexts of Democratization and Governance Reform*, edited by Anne Marie Goetz: Routledge, 2009.
- List, Christian, and Philip Pettit. *Group Agency: The Possibility, Design, and Status of Corporate Agents*. New York: Oxford University Press, 2011.
- Longobardo, Marco. "The Self-Proclaimed Statehood of the Islamic State between 2014 and 2017 and International Law." *Anuario español de derecho internacional* 33 (2017): 205-28.
- Magill, Kevin. "Blaming, Understanding, and Justification." In *Moral Responsibility and Ontology*, edited by Ton van den Beld, 183-97. Dordrecht: Kluwer Academic Publishers, 2000.
- Margalit, Avishai. "Recognition II: Recognizing the Brother and the Other." In *Aristotelian Society Supplementary*. Vol. 75, 127-39. Bristol: The Aristotelian Society Publications, 2001.
- Martin, Richard C. "The Religious Foundations of War, Peace, and Statecraft in Islam." In *Just War and Jihad: Historical and Theoretical Perspectives on War and Peace in*

- Western and Islamic Traditions*, edited by John Kelsay and James Turner Johnson. Westport, CT: Greenwood Press, 1991.
- May, Larry. *Crimes against Humanity: A Normative Account*. Cambridge: Cambridge University Press, 2005.
- . “Group Ontology and Legal Strategy: A Reply to Tam.” *Business and Professional Ethics Journal* 8, no. 1 (1989): 83-88.
- . *The Morality of Groups: Collective Responsibility, Group-Based Harm, and Corporate Rights*. Notre Dame, Ind.: University of Notre Dame Press, 1987.
- . *Sharing Responsibility*. University of Chicago Press, 1992.
- McMahan, Jeff. “The Basis of Moral Liability to Defensive Killing.” *Philosophical Issues* 15, no. 1 (2005): 386-405.
- Mill, John Stuart. *On Liberty* (1859). Edited by David Bromwich and George Kateb. New Haven: Yale University Press, 2003.
- . “On the Logic of the Moral Sciences (Book VI).” In *A System of Logic, Ratiocinative and Inductive, Part II*. Buffalo, NY: University of Toronto Press, 1981.
- Minault, Gail. *The Khilafat Movement: Religious Symbolism and Political Mobilization in India*. New York: Columbia University Press, 1982.
- Montevideo Convention on the Rights and Duties of States*. Signed at the International Conference of American States in Montevideo Uruguay, 26 December 1933. Came into force 26 December 1934.
- Murad, Nadia, and Jenna Krajeski. *The Last Girl: My Story of Captivity, and My Fight against the Islamic State*. New York: Tim Duggan Books, 2017.
- Na‘īm, ‘Abd Allāh Aḥmad. *Islam and the Secular State: Negotiating the Future of Shari‘a*. Cambridge, MA: Harvard University Press, 2008.
- Nisbett, Richard E., and Dov Cohen. *Culture of Honor: The Psychology of Violence in the South*. Boulder, CO: Westview Press, 1996.
- Nozick, Robert. *Anarchy, State, and Utopia*. New York: Basic Books, 1974.
- Oppenheim, Lassa. *International Law: A Treatise*. Philadelphia: David McKay, 1955.
- Parfit, Derek. *Reasons and Persons*. Oxford: Clarendon Press, 1984.
- . “What Makes Someone’s Life Go Best?”. In *Ethical Theory: An Anthology*, edited by Russ Shafer-Landau. Oxford: John Wiley & Sons, Inc., 2013.
- Patterson, Orlando. *Slavery and Social Death*. Cambridge, MA: Harvard University Press, 1982.
- Petersson, Björn. “Collective Omissions and Responsibility.” *Philosophical Papers* 37, no. 2 (2008): 243-61.
- Raič, David. *Statehood and the Law of Self-Determination*. The Hague: Kluwer Law International, 2002.
- Rauf, Imam Feisal Abdul. *Defining Islamic Statehood: Measuring and Indexing Contemporary Muslim States*. New York: Palgrave Macmillan, 2015.
- Risjord, Mark W. *Philosophy of Social Science: A Contemporary Introduction*. New York: Routledge, 2014.
- Rosen, Armin. “What Everyone Is Missing About ISIS’s Big Week.” *Business Insider*, May 22, 2015.
- Rousseau, Jean-Jacques. “The Second Discourse.” In *The Social Contract and the First and Second Discourses*, edited by Susan Dunn. New Haven, CT: Yale University Press, 2002.

- . “The Social Contract.” In *The Social Contract and the First and Second Discourses*, edited by Susan Dunn. New Haven: Yale University Press, 2002.
- Sawyer, R. Keith. “Nonreductive Individualism: Part I—Supervenience and Wild Disjunction.” *Philosophy of the Social Sciences* 32, no. 4 (2002): 537-59.
- Scanlon, Thomas. “The Status of Well-Being.” In *Tanner Lectures on Human Values*, edited by Grethe B. Peterson. Salt Lake City, UT: University of Utah Press, 1998.
- . *What We Owe to Each Other*. Cambridge, MA: Harvard University Press, 1998.
- Schmitt, Carl. *Political Theology: Four Chapters on the Concept of Sovereignty*. Translated by George Schwab. Chicago: University of Chicago Press, 2005.
- Searcey, Dionne. “Nigeria Rescues Another Student from 2014 Chibok Kidnapping.” *The New York Times*, January 4, 2018.
- Shaheen, Kareem. “ISIS ‘Controls 50% of Syria’ after Seizing Historic City of Palmyra.” *The Guardian*, May 21, 2015.
- Shaw, Malcolm N. *International Law*. 7th ed. Cambridge: Cambridge University Press, 2014.
- Sheehy, Paul. “On Plural Subject Theory.” *Journal of Social Philosophy* 33, no. 3 (2002): 377-94.
- . *The Reality of Social Groups*. Burlington, VT: Ashgate Publishing, Ltd., 2006.
- Shklar, Judith N. *Legalism*. Cambridge, MA: Harvard University Press, 1964.
- Smart, J. J. C. “Free-Will, Praise and Blame.” *Mind* 70, no. 279 (1961): 291-306.
- Strawson, P. F. “Freedom and Resentment.” In *Freedom and Resentment and Other Essays*, 1-28. New York: Routledge, 2008.
- Tännsjö, Torbjörn. “The Myth of Innocence: On Collective Responsibility and Collective Punishment.” *Philosophical Papers* 36, no. 2 (2007): 295-314.
- Thompson, Simon. “Models of Democracy and the Politics of Recognition.” In *The Plural States of Recognition*, edited by Michel Seymour. New York: Palgrave Macmillan, 2010.
- Thomson, Judith Jarvis. *The Realm of Rights*. Cambridge, MA: Harvard University Press, 1990.
- . “Self-Defense.” *Philosophy & Public Affairs* 20, no. 4 (1991).
- Tompkins, Tamara L. “Prosecuting Rape as a War Crime: Speaking the Unspeakable.” *Notre Dame Law Review* 70 (1994): 845.
- Totsuka, Etsuro. “Commentary on a Victory for Comfort Women: Japan’s Judicial Recognition of Military Sexual Slavery.” *Pacific Rim Law and Policy Journal* 8 (1999).
- Townsend, Mark. “Rape and Slavery Was Lure for U.K. ISIS Recruits with History of Sexual Violence.” *The Guardian*, October 7, 2017.
- Tuomela, Raimo. “Joint Intention, We - Mode and I - Mode.” *Midwest Studies in Philosophy* 30, no. 1 (2006): 35-58.
- . *Social Ontology: Collective Intentionality and Group Agents*. New York: Oxford University Press, 2013.
- U.N. *Statute of the International Court of Justice*. 18 April 1946.
- U.N. General Assembly. *Convention on the Prevention and Punishment of the Crime of Genocide*. 9 December 1948.
- . *Rome Statute of the International Criminal Court (last amended 2010)*. 17 July 1998.
- U.N. Human Rights Council. “*They came to destroy*”: *ISIS Crimes Against the Yazidis*. U.N. Doc. A/HRC/32/CRP.2, 15 June 2016.

- U.N. Security Council. 69th Sess., 7272nd mtg. 24 September 2014.
- . Res. 2249 [on Terrorist Attacks Perpetrated by ISIL Also Known as Da'esh]. U.N. Doc. S/RES/2249, 20 November 2015.
- . *Statute of the International Criminal Tribunal for the Former Yugoslavia (as amended on 17 May 2002)*. 25 May 1993.
- . *Statute of the International Criminal Tribunal for Rwanda (as last amended on 13 October 2006)*. 8 November 1994.
- Uniacke, Suzanne. *Permissible Killing : The Self-Defence Justification of Homicide*. Cambridge Studies in Philosophy and Law. Cambridge: Cambridge University Press, 1994.
- Vandello, Joseph O., and Dov Cohen. "Male Honor and Female Fidelity: Implicit Cultural Scripts That Perpetuate Domestic Violence." *Journal of Personality and Social Psychology* 84, no. 5 (2003): 997–1010.
- Vargas, Manuel. *Building Better Beings: A Theory of Moral Responsibility*. Oxford: Oxford University Press, 2013.
- Wallace, R. Jay. *Responsibility and the Moral Sentiments*. Cambridge, MA: Harvard University Press, 1994.
- Warbrick, Colin. "States and Recognition in International Law." In *International Law*, edited by Malcolm D. Evans. Oxford: Oxford University Press, 2003.
- Watkins, J. W. N. "Ideal Types and Historical Explanation." In *Readings in the Philosophy of Science*, edited by Herbert Feigl and May Brodbeck, New York: Appleton-Century-Crofts, 1953.
- . "Methodological Individualism: A Reply." *Philosophy of Science* 22, no. 1 (1955): 58-62.
- Watson, Gary. "Responsibility and the Limits of Evil." In *Responsibility, Character, and the Emotions*, edited by Ferdinand Schoeman. New York: Cambridge University Press, 1987.
- . "The Trouble with Psychopaths." In *Reasons and Recognition: Essays on the Philosophy of T. M. Scanlon*, edited by R. Jay Wallace, Rahul Kumar and Samuel Richard Freeman. New York: Oxford University Press, 2011.
- . "Two Faces of Responsibility." *Philosophical Topics* 24, no. 2 (1996): 227-48.
- Weber, Max. "Politics as a Vocation." In *From Max Weber: Essays in Sociology*, edited by H.H. Gerth and C. Wright Mills. New York: Oxford University Press, 1946.
- Wertheimer, Alan. *Consent to Sexual Relations*. Cambridge: Cambridge University Press, 2003.
- West, Robin. "Legitimizing the Illegitimate: A Comment on 'Beyond Rape'." *Columbia Law Review* 93 (1991).
- Wheaton, Henry. *Elements of International Law*. 2nd Annotated ed. London: Sampson Low, Son and Company, 1864.
- Williams, Bernard. *Shame and Necessity*. Berkeley: University of California Press, 2008.
- Yihdego, Zeray. "The Islamic 'State' Challenge: Defining the Actor." In *E-International Relations*, 2015.
- Zurn, Christopher F. "Introduction." In *The Philosophy of Recognition: Historical and Contemporary Perspectives*, edited by Hans-Christoph Schmidt am Busch and Christopher F. Zurn. Plymouth, UK: Lexington Books, 2010.