A picture held us captive. And we could not get outside it, for it lay in our language and language seemed to repeat it to us inexorably. (Wittgenstein 1973: §115)

‘Imagination’ is the word that cannot be avoided. (Hampshire 1989: 125)

In December 2016, the Syrian army tightened its iron grip on Aleppo. What was once Syria’s largest city had been under siege by government troops, supported by Russia and Iran, for almost four years. In many respects, of course, ‘the battle of Aleppo’ (as the siege was often called) had become a microcosm of the Syrian conflict. It exposed the tactical and military weaknesses of both government and non-government troops, it made the immense difficulties for international negotiators to broker a peace agreement plainly obvious and it demonstrated the repeated failure of the international community to protect civilians. But now the anti-government forces were pushed back and thousands of civilians were trapped in the remaining few neighbourhoods held by the rebels. Artillery, rockets and missiles were raining down on them; summary executions and atrocities against women and children were reported; and, as the media began to draw comparisons with Stalingrad, Srebrenica or Rwanda, the desperation of international observers mounted: ‘Every hour, butcheries are carried out’, the Syrian Observatory for Human Rights reported. France’s ambassador to the UN warned that ‘the worst
humanitarian tragedy of the twenty-first century is unfolding before our eyes’ (Wright 2016: para. 5). And Ban Ki-moon, remarkably enough, in his final press conference as UN Secretary-General, asserted that Aleppo had become ‘a synonym for hell’ (United Nations 2016).

Perhaps the most interesting display of differing positions on the situation, however, took place during a UN Security Council Emergency Meeting on 13 December. Samantha Power, then US ambassador to the UN, unleashed a scathing attack on the Syrian regime and its allies:

To the Assad regime, Russia, and Iran—three Member States behind the conquest of and carnage in Aleppo—you bear responsibility for these atrocities. By rejecting UN-ICRC evacuation efforts, you are signaling to those militia who are massacring innocents to keep doing what they are doing…

Aleppo will join the ranks of those events in world history that define modern evil, that stain our conscience decades later. Halabja, Rwanda, Srebrenica, and, now, Aleppo.

To the Assad regime, Russia, and Iran, your forces and proxies are carrying out these crimes. Your barrel bombs and mortars and airstrikes have allowed the militia in Aleppo to encircle tens of thousands of civilians in your ever-tightening noose. It is your noose. Three Member States of the UN contributing to a noose around civilians.

But, quite predictably, the Russian ambassador Vitaly Churkin was not stumped for an answer:

I wouldn’t want to remind this Western trio [France, US, UK] which called for today’s meeting and carried it out in a raised voice, about your role in the creation of ISIS as a result of US and UK intervention in Iraq.

I don’t want to remind these three countries about their role in unwinding the Syrian crisis, which led to such difficult consequences, and let terrorists spread in Syria and Iraq.

The weirdest speech to me was the one by the US representative which built her statement as if she is Mother Teresa herself. Please, remember which country you represent. Please, remember the track record of your country.

It might be said, of course, that this is overblown and histrionic rhetoric—hardly worth serious political and moral consideration. However, what I find interesting about this diplomatic skirmish is that it brings to the fore several aspects of, and positions in, world politics that I will explore in this book: the complex relationship between politics and morality, the charge
of arrogant (and hypocritical) moral posturing that often goes by the name of ‘moralism’, the seemingly perpetual problem of how to confront mass atrocities in a plural world and the moral and political reality of evil. These, as I say, are the themes that I will try to elucidate. For now, however, let me emphasise that Aleppo is, of course, only one episode of a conflict that is, at the time of writing this Introduction, well into its tenth year. While the exact death toll is, as a New York Times article puts it, lost in ‘the fog of war’ (Specia 2018), it is estimated that the conflict has claimed between 400,000 and 600,000 lives. The United Nations High Commissioner for Refugees (UNHCR) states that over 5.6 million people have fled Syria since 2011 and that 6.6 million have become internally displaced (2020). It is certainly true, then, that the categorical promise ‘never again’—the rallying cry of the ‘anti-atrocity movement—has long been washed away by ‘this immense tidal wave of bloodshed and atrocity’ (United Nations 2017). ‘Never again’ has been unmasked as what it always has been: an empty slogan. And it must sound like a mockery to the Syrian people.

In her sensitive, yet insightful, reportage of the lives of ordinary Syrians in the shattered country, Rania Abouzeid (2018) vividly describes how the population struggles not only to survive but also to retain hope amidst the violence, the horrors and the loss they are faced with on an almost daily basis. ‘These things happened’, she writes. ‘These things continue to happen. Some of these things should never happen again’ (2018: xii). And who in this world could disagree with her? Yet, despite the massive toll that the conflict has exacted on the population, it is important (as I will try to demonstrate in this book) that Syria is not ‘only’ a humanitarian catastrophe. ‘The destruction of whole societies in the Middle East’, Madeleine Albright rightly reminds us (US Institute of Peace 2015), ‘is not a regional problem, but a global crisis... And it is a crisis that is not only a humanitarian... but also a political emergency’. Syria, then, is a global political as much as it is a humanitarian disaster. And it is a cautionary tale that the perpetration of harrowing mass atrocities is a very concrete phenomenon of ethical and political life. Even, and perhaps especially, in the globalised world of the twenty-first century.

1.1 THE Rift AND THE Alternative

It is not surprising, therefore, that the Syrian conflict has created a palpable sense of disillusionment among many scholars and practitioners
of international politics. After all, there are existing international tools to combat mass atrocities. Two particularly prominent ones are the Responsibility to Protect (R2P)—a universally endorsed international mechanism to prevent and respond to genocide, crimes against humanity, war crimes and ethnic cleansing; and the International Criminal Court (ICC)—an international court of law created to prosecute and punish those who are responsible for the perpetration of international crimes. But both R2P and the ICC have been consigned to irrelevance in the Syrian conflict. For other scholars and practitioners, however, the Syrian case simply demonstrates, once again, the limitations of international attempts to combat mass atrocities and the post-Cold War liberal world order. For them, Syria is merely one more example of the clash between the moral imperative to ‘save strangers’ and the harsh realities of political life that are shaped by the political interests of powerful actors. And there is, undoubtedly, more than a grain of truth in this diagnosis.

The point I wish to make in this book, however, is that scholars of International Relations (IR) and related disciplines have evinced a remarkable lack of imagination in addressing the question of why and how to confront mass atrocities in a plural world. For the literature on R2P and the ICC has (often tacitly) accepted and even reinforced the picture of what Matt Sleat (2016) calls the ‘liberal-realist impasse’, that is, the irreconcilability of lofty moral principles and political reality. In actual fact, though, even the picture of a ‘liberal-realist impasse’ is too simplistic. A more pertinent (but probably less elegant) picture, I suggest, is that of a ‘liberal-cosmopolitan/realist-critical scholarship rift’. On one side of this rift, we find liberals and cosmopolitans who believe in the universal reach of human rights, the contingent nature of state sovereignty and the possibility and viability of global justice; these scholars are often (though not always, of course) sympathetic towards the idea of international intervention. On the other side of the rift, there are realists who insist on the continuing centrality of political interest in international affairs, the virtue of restraint in foreign policy and the dangers of ‘moralism’ in politics. On this side of the rift, we also find ‘critical’ scholars who tend to emphasise the continuing importance of state sovereignty as a defence shield against foreign intervention and domination, the contingent nature of human rights and the dangers of imposing hegemonic visions of justice upon a deeply pluralistic world. Both realists and critical scholars, obviously, tend to be highly critical of the idea of international intervention: For them, international intervention is an expression of the utopian fallacy.
that lofty moral ideas can lead to a ‘harmony of interest’ in international relations at best and an expression of an insidious moralism that seeks the global imposition of a very particular set of ideas and values at worst. Responses to mass atrocities, then, are either framed as morally virtuous international efforts to defend universal human rights and global justice, as an expression of the utopian liberal idea of a ‘harmony of interests’, or as hegemonic attempts to impose Western conceptions of rights and justice in blatant disregard for the differences and the plurality that mark international political life.

Alas, the rift between these camps is deep and wide, and so there can be little dialogue between them and their respective positions. This, at least, is the picture that the literature on mass atrocities has created and, in some respects, reinforced. I argue, however, that it is a lack of scholarly imagination that allows this picture to hold the literature captive. It is a lack of imagination that seems to render it impossible to ‘get outside’ this picture. And it is a lack of imagination that seems to leave us with the unedifying options of liberal utopianism, realist cynicism or critical relativism. My aim in this book, quite simply, is to create an alternative picture, one that allows us to give more imaginative answers to the question of why and how to confront mass atrocities in a plural world. This picture weaves together realist, liberal, cosmopolitan and critical insights and brings into a close relationship the concept of international intervention, the interest of powerful political actors and the idea of the moral and political value of human plurality for (international) political life. To create such an alternative picture, I will focus on three closely related ideas: First, I will try to show how responses to mass atrocities can be reimagined as attempts to protect a genuine plurality of religious beliefs, moral and ethical norms, cultural traditions and political ideas. Secondly, I seek to demonstrate how responses to mass atrocities can be reframed and reconceptualised as actions that are not purely based on moral altruism but are also expressions of the political interests of states; or, to put this point slightly differently, how responses to mass atrocities can be ‘re-politicised’. The third idea, since it concerns the problem of world order, has a broader focus: I will expound how it is possible to justify the establishment of an overarching world order in a world that not only is but, crucially, ought to be inherently pluralistic.

To put the cards on the table, here is, in a nutshell, the thesis that brings these three ideas together and that I aim to defend in this book: Mass atrocities such as genocide and crimes against humanity should be
interpreted, understood and confronted as crimes against human plurality. And since, as Hannah Arendt asserts, plurality is the ontological condition of our common humanity, mass atrocities are crimes against humanity itself, crimes that therefore deserve, and even demand, the controversial label ‘evil’. Almost by definition, then, there is a universal interest to defend human plurality, to confront crimes against our common humanity and to protect human plurality from evil. The protection of humanity from attempts to eradicate genuine plurality and difference, finally, can serve as a legitimate Grundnorm (basic norm) around which a global constitutional order in a world that not only is but ought to be inherently pluralistic can and should be constructed.

1.2 The Mosaic and Its Elements

The purpose of this book is to (re)imagine why and how to confront mass atrocities in world politics. My aim, as I said, is to create a picture that weaves together realist, liberal, cosmopolitan and critical insights and, thus, to bring into a close relationship the concept of international intervention, the interest of powerful political actors and the idea of the moral and political value of plurality for political life. This picture, however, is a mosaic. It is composed of different elements that add up to a picture distinct from the ‘liberal-cosmopolitan/realist-critical scholarship rift’. In this section, I will provide an overview of both the individual elements of the mosaic and the resulting picture; I will introduce, in other words, the central arguments of the book. In doing so, I will carve out what I think are the fundamental weaknesses in the respective literatures on R2P, the ICC and global constitutionalism and, subsequently, outline the original contributions this book makes to either of the three bodies of literature. Finally, I will sketch conception out the of evil that not only serves as the glue that holds the different elements together but is, in itself, the centrepiece of the mosaic.

1.2.1 An Alternative to R2P’s Apolitical Logic

The first element of this mosaic is a reframed vision of R2P—a ‘responsibility to protect humanity from evil’. In a nutshell, R2P is the idea that there is a responsibility to protect a state’s population from mass atrocities; and if a state fails to discharge this responsibility, it becomes
the responsibility of the ‘international community’ to protect the population. But despite (or perhaps: Because of) the fact that over the last 15 years or so a vast body of literature on R2P has been produced, the concrete meaning and content of R2P—especially of the ‘secondary’ international responsibility—has become increasingly ‘contested’ (Welsh 2013; Zähringer 2013; Ziegler 2016). Although the original expression of R2P, the 2001 report of the International Committee on Intervention and State Sovereignty (ICISS), declared a ‘commitment to prevention’ (2001: 19), and stated that the ‘responsibility to prevent’ is the most important pillar of R2P (2001: XI), the committee devoted most of its attention to the responsibility ‘to respond to situations of compelling human need with appropriate measures, which may include... military intervention’ (2001: XI). That is not to say that the ICISS’ commitment to prevention was not genuine; but it is also true, as Chris Brown observes, that military intervention has always been regarded as ‘the real test of the... [R2P] ... doctrine’ (2013: 245). In a similar vein, Ramesh Thakur and Thomas G. Weiss, despite calling for a ‘paradigm shift from a culture of reaction to one of prevention’ (2009: 50), present R2P as ‘possibly the most dramatic normative development of our time’ because it ‘relates to the use of military force to protect human beings’ (2009: 23; emphasis added). To avoid misunderstandings, the original idea of R2P was by no means limited to intervention in general and the use of military force in particular; the ICISS, rather, adopted a holistic approach to the problem of mass atrocities, which included a ‘responsibility to prevent’ mass atrocities and a ‘responsibility to rebuild’ a country after an intervention. But the original idea of R2P was also—and in very important respects—concerned with the question of non-consensual military intervention. Today, in the aftermath of the intervention in Libya in 2011, which was initially celebrated as a triumph (Daalder and Stavridis 2012) and later condemned as an abject failure (Kuperman 2015), and in light of the disaster in Syria, much of the initial optimism among advocates of R2P has evaporated. Indeed, many advocates have begun to ask themselves if ‘we are manifestly failing R2P’ (Sancin 2017).

I will engage with critics of R2P in considerable detail in Chapter 3. At this point, I only wish to introduce two currents in the literature to, as it were, set the scene for later chapters. The first is to shift the focus away from military intervention. This, of course, is not necessarily a bad strategy. James Pattison’s recent book (2018), for instance, is a thoughtful attempt to think through alternatives to war in the face of atrocities. It
is true that R2P has always meant more than just the use of military force and it is undoubtedly crucial to probe the potential of non-military options in the struggle against mass atrocities. But it is also telling that Pattison is quick to reject pacifism and to argue that the use of military force must be permissible ‘on rare occasions’ (2018: 2). Jason Ralph’s recent attempt to ‘reframe R2P as asylum’ (2018: 196) shifts the focus even further away from military intervention and coercive action. Ralph’s ‘pragmatic constructivist approach’, however, runs the risk of throwing out the baby with the bathwater: For by trying to eliminate all coercive elements from R2P in the name of ‘pragmatism’ and ‘humility’, it reduces R2P to a (perhaps) less controversial but, ultimately, impotent caricature of the original idea. It is, thus, one of the strategic decisions that I make in this book to limit my observations on R2P to military intervention. Not, to say it again, because I think that prevention or alternatives to war are not important—they certainly are. I do, however, agree with Chris Brown that military intervention continues to be the real test of the R2P doctrine; and I think that removing the option of military force to make R2P less controversial in political practice would be something like a wager lost by winning: Even if it did make R2P more palatable for some (which is by no means guaranteed, though), this ‘victory’ would come at the price of sacrificing too much of its potential to prompt timely and decisive responses in cases of mass atrocities.

A second current in the literature, coming from a broadly realist perspective, argues that new ideas must be developed to ‘re-politicise’ R2P. Scholars like Adrian Gallagher (2012), Matt Sleat (2016), and Chris Brown (2003, 2010, 2013) argue that in its current unpolitical conception R2P is too far removed from the highly politicised realities of atrocity cases to influence political practice. Brown eloquently captures the fundamental problem of R2P in the following passage (2013: 442): ‘The value of a principle such as [R2P] lies not in its capacity to determine action on its own by taking the matter out of the realm of political calculation but in the way that… it may actually feed into the calculation of the national interest.’ To be sure, Brown and others have merely diagnosed R2P’s fundamental weakness; they have not been able to outline a more political vision of it. But their criticism provides a helpful starting point for the creation of such a vision. For notwithstanding its contested character, it is safe to say that the very idea of R2P is based on three dimensions: First, R2P has always been an attempt to prompt international responses
to harrowing mass atrocities; second, R2P has always emphasised the existence of an international responsibility to protect the population if a state itself fails to do so; third, R2P has always been based on the existence of a link between the first and the second dimension, that is, based on the idea that the insistence on a moral international responsibility to ‘save strangers’, will prompt international political action in the face of atrocities. The task, then, is to develop an alternative to the apolitical logic of the third dimension and to create a ‘re-politicised’ and ‘demoralised’ vision of R2P. And, indeed, it is with the creation of such a vision—of a ‘responsibility to protect humanity from evil’—that I seek to reframe R2P in Chapter 3.

1.2.2 Identifying the ICC’s Primary Purpose

A second element of the mosaic is a reconceptualised vision of the ICC as a ‘bulwark against evil’. As it is true that since its establishment in 1998 the ICC has been ‘in search of its purpose and identity’ (Mariniello 2015), the question of the ICC’s nature and its purpose in world politics is particularly relevant and pressing. There are at least two different discourses that try to illuminate the ‘nature’ of the ICC. The first—it might be called the ‘legalistic discourse’—portrays the ICC as an exclusively legal institution and presents politics as the ICC’s ‘bête noire’ (Royer 2019); regardless of its nature as an international court, the aim, according to this discourse, must be to bring the ICC ‘closer to the best practices of national criminal systems’ (Danner 2003: 515). This means, first and foremost, to establish and develop the ICC as an unyielding pursuer of legal justice, a strictly apolitical, even anti-political, court of law that is completely detached from political interests and influences. In many respects, this narrative presents the creation of the ICC as a response to the dangers of politics and, as a consequence, defines its role in anti-political terms. Remarkably enough, even the ICC’s Prosecutors have contributed to this legalistic and anti-political discourse. Luis Moreno Ocampo, the former Prosecutor asserted (2010: 6) that he is ‘not involved in political considerations’. His duty, he made clear, ‘is to apply the law without political considerations. Other actors have to adjust to the law’. Thus, the ICC is portrayed as a strictly legal, neutral and apolitical institution, an ‘island’ that has been created to exist in isolation from the impure forces of politics.
The second discourse might be called the ‘anti-legalistic discourse’; dissatisfied with rigid legalism, it insists that the ICC does not exist and operate detached from politics; it, therefore, cannot be understood and should not be studied in isolation from politics. According to the anti-legalistic discourse, it must be taken into account that the ICC exists in a ‘world of power politics’ (Bosco 2014). As a consequence, the Court is shaped by the ‘convergence of politics, ethics and law’ (Roach 2006) and ‘politics is central to the court’s actions’ (Hoover 2014: 281). Thus, the scholars who contribute to the anti-legalistic discourse argue—convincingly, I believe—that the legalistic idea of the ICC as an anti-political institution that exists and operates beyond the dynamics of politics is an illusion.

While I am sympathetic to this non-legalistic picture of the nature of the ICC, the non-legalistic discourse is seriously limited in another respect: it has relatively little to say about the ICC’s purpose in world politics. The reason for this is that while most of the authors who have contributed to the anti-legalistic picture of the ICC have focused on issues of ‘politicisation’ (Roach 2006: 6–8), they have as yet failed to portray and analyse the ICC as a ‘political actor’, that is, as an actor with its own political interests. To be sure, portraying and analysing the ICC as a political actor is a radical step because it strikes at the very heart of the idea of the legal trial as something that takes place beyond political interests; it strikes, in other words, at the very heart of the (legalistic) idea that the ICC intervenes as a ‘disinterested party’ (Ralph 2007: 115). But this radical step can shed light on the critical question which Mirjan Damaška (2008) has expressed as ‘what’s the point of international criminal justice’ and which I would like to frame as the ‘primary purpose’ of ICC prosecution and punishment. But why is this question of the ICC’s ‘primary purpose’ of such crucial importance? There are two reasons for this: First, many scholars of international criminal justice (Sloane 2006; Drumbl 2007; Woods 2012; Werkmeister 2015) agree with Martti Koskenniemi’s assertion that due to the gravity of international crimes ‘the… significance [of international criminal trials] must lie elsewhere than in the punishment handed out to [perpetrators]’ (2002: 2). The ICC’s primary purpose, in other words, cannot lie in the mere retribution of injustice. And second, numerous commentators reject the idea that prosecution and punishment go hand in hand with socially beneficial consequences such as the establishment and maintenance of peace, the deterrence of future atrocity crimes, reconciliation or the establishment
of a reliable historical account of the crimes; these scholars, in fact, have expressed serious doubts concerning such a ‘harmony of purposes’ (more recently Ainley 2011; Kaye 2011; Kersten 2016; Mariniello 2016). In particular, many scholars have pointed to the possibility that the ICC’s efforts to pursue justice (in the form of prosecution and punishment) can be detrimental to efforts to establish peace and even instigate or exacerbate bloody conflicts (Arsanjani and Reismann 2005; Mills 2015a; Wegner 2015; Kersten 2016). This book’s original contribution to the existing scholarship on the ICC, then, is the identification and elaboration of a ‘primary purpose’ beyond the legalistic idea that the ICC’s primary purpose is to deliver justice: Based on the idea of the Court as a political actor, my aim in Chapter 4 is to demonstrate that it is not in the ICC’s interest to pursue justice whatever the cost; instead, it is in the ICC’s interest to act as a flexible actor in a global struggle against mass atrocities. The ICC’s primary purpose, therefore, is to combat the evil of mass atrocities—the Court is thereby reconceptualised as a ‘bulwark against evil’.

1.2.3 A Distinctive Vision of World Order

Of course, R2P and the ICC do not exist in isolation from each other. Accordingly, recent scholarship has paid considerable attention to their complex relationship (Ainley 2015; Birdsall 2015; Mills 2015b; Mégret 2015; Ralph 2015; Stahn 2015; Bellamy 2018). However, in order to add a further element to the mosaic, it is necessary to ‘zoom out’, so to speak, and to develop a clearer picture of R2P’s and the ICC’s place and role in the changing landscape of contemporary world order. Along with other scholars (Burke-White and Slaughter 2002; Peters 2011: 189; Birdsall and Lang 2017), I interpret R2P and the ICC as expressions of an emerging global constitutional order. This global constitutional order is marked by a shift ‘from globalised towards constitutionalised relations in the global realm’ (Wiener et al. 2012: 6); this shift makes it difficult to sustain the traditional ‘Westphalian’ picture of fully sovereign states and a horizontal world order (Cohen 2011, 2012) and has led to the emergence of the research field of global constitutionalism. Growing out of the literature on the constitutionalisation of the European Union and EU law (Grimm 1995; Habermas 1995; Weiler 1999), the literature on global constitutionalism has been dominated by legal scholars. As Antje Wiener (2012: 5; emphasis added) observes: ‘The concept of
global constitutionalism has become a regular if often critically applied reference *in international law* only since the turn of the 21st century. To political scientists and especially international relations theorists, the concept’s application is unfamiliar and arguably suspicious’. The same, unfortunately, can be said for many (international) political theorists. Yet, the legalism that permeates much of the scholarship on global constitutionalism has led to a rather narrow focus on legal questions in general and a distinctively legalistic take on global constitutionalism’s core norms of ‘human rights, democracy and the rule of law’ (Wiener et al. 2012) in particular. This legalism, which tends to analyse the moral and political issues generated by the emergence of a global constitutional order almost exclusively through a legal lens, leaves many important questions unexamined. From a normative perspective, one of the most pressing questions for global constitutionalism is whether it is legitimate and desirable, given the plurality of different religious beliefs, moral norms, cultural traditions and political ideas, to establish and advocate such an overarching world order. After all, the imposition of Western conceptions of human rights or democracy can all too easily turn into a hegemonic and violent form of neo-imperialism (Mouffe 2005: 107). This is why the editors of the leading academic journal on global constitutionalism have recently urged scholars to adopt a more critical lens; in particular, they have invited scholars to enrich global constitutionalism with ‘agonistic elements’ and to develop accounts of a ‘contestatory (or agonistic) global constitutionalism’ (Tully et al. 2016: 14). What, then, is political agonism? Mark Wenman works out three fundamental characteristics of agonistic thought (2013: 28–58): First, agonists do not only stress the ineradicability of conflict in social and political life but insist on the ethical and political value of certain forms of struggle, competition and conflict. Second, agonistic theories are based on the fundamental value of human plurality as a constitutive element of social and political life. And third, agonists employ the concept of tragedy to challenge rationalistic ideas of progress and to express the idea ‘of a world without… final redemption from suffering and strife’ (Wenman 2013: 33). Thus, the challenge of the editors is to develop accounts of global constitutionalism that do not merely—as liberals tend to do—tolerate the fact of plurality but, rather, celebrate the value of plurality; moreover, such accounts of global constitutionalism, precisely because they regard plurality as a precious value, would be sensitive to the ‘moral and political significance of contest and
struggle’ (Schaap 2007: 57) generated by competing views, opinions and beliefs.

The most influential existing attempt to fuse global constitutionalism with political agonism is Antje Wiener’s *The Invisible Constitution of Politics: Contested Norms and International Encounters.* 27 Wiener’s point of departure is that ‘a new constitutional quality’ expresses itself in norms, rules and principles that transcend the boundaries of the nation-state (2008: 1). While the meaning of these norms, rules and principles is inherently contested through ‘invisible’ factors of ‘cultural validation’ (2008: 4–7), Wiener insists that contestation is ‘a necessary condition for establishing legitimacy from the perspective of democratic constitutionalism’ (2008: 39) and for ‘maintaining and encouraging... diversity in the global realm’ (2008: 211). Obviously, then, there are strong agonistic elements in Wiener’s concern for diversity and plurality in world politics and in her view that contestation and struggle are important tools to sustain plurality and diversity. To be clear, I do think that Wiener’s work is insightful and, in many respects, pioneering. Nonetheless, I also find her agonistic global constitutionalism problematic for several reasons: First, Wiener insists that contestation has to ‘go all the way down’, to wit, every norm, every rule and every principle has to remain subject to contestation (2008: 48). In my view, however, the dogma that contestation and struggle have to ‘go all the way down’ can only end in relativism; such a relativism, in turn, constitutes a threat to, rather than a catalyst for, agonistic values such as plurality, equality and human freedom. 28 While I am certain that Wiener would reject the charge of relativism, her book nonetheless leaves unanswered the question of where to draw the line between legitimate and constructive contestation and illegitimate and destructive strife. Closely related to this is the point that Wiener suggests the ‘principle of as a Grundnorm for democratic politics in beyond-the-state contexts’ (2008: 40; also 211). 29 But the idea of contestedness as the ‘Grundnorm’ (basic norm) of a democratic global constitutionalism is self-defeating: for if the basic norm can itself be contested, then the principle of contestation itself becomes the subject of contestation. This, in turn, has the consequence that a rejection or violation of the Grundnorm must be interpreted as a legitimate expression of contestation. Wiener’s idea of the ‘Grundnorm of contestedness’ is therefore self-defeating. Finally, Wiener rejects every position of universalism as one that keeps ‘diversity at bay’ (2008: 211). This, however, is a curious argument, given the fact that Wiener herself endorses diversity as ‘a value in
itself’ (2008: 210) and, as such, as a universal value. My aim in Chapter 5 is to create a vision of agonistic global constitutionalism that focuses on the question of how to justify the establishment of an overarching global constitutional order in a world that not only is but, crucially, ought to be inherently pluralistic. This global constitutionalism differs from Wiener’s account in three important respects: First, it rejects the notion that contestation and struggle have to go ‘all the way down’ and thus draws a line between legitimate and productive struggle and illegitimate and destructive strife. Secondly, it refuses to turn a blind eye to the fact that it relies on universal values and accepts that these values must be defended against those who reject or violate them. And thirdly, at the heart of this agonistic global constitutionalism lies a (more robust) Grundnorm that is indeed placed beyond contestation and struggle: the Grundnorm of protecting humanity from evil.

1.2.4 The Meaning and the Role of Evil

I have already alluded to the pivotal role that the concept of evil plays in (re)imagining how and why to confront mass atrocities in world politics: the concept of evil allows for a reframing of R2P as a ‘responsibility to protect humanity from evil’, it facilitates the reconceptualisation of the ICC as a ‘bulwark against evil’ with the primary purpose of combatting evil, and it makes possible the creation of an ‘agonistic global constitutionalism’ that is constructed around the Grundnorm of protecting humanity from evil. However, I have not yet explained what I mean when I use the word ‘evil’ and why I think that the concept—or more precisely, a particular conception—of evil has enormous moral and political potential. I will do so now.

Closely following the ideas of the political theorist Hannah Arendt, I understand evil as a crime against human plurality and, consequently, as a crime against humanity itself. For Arendt, as we will see in Chapter 2, human plurality, that is, a genuine plurality of religious beliefs, moral and ethical norms, cultural traditions and political ideas, constitutes the ontological condition of our common humanity. Attempts to eradicate human plurality, according to Arendt, are crimes against humanity itself and, as such, deserve and even demand the label of evil. I will elaborate Arendt’s conception of evil in detail in Chapter 2; for now, I only wish to clarify what role this conception of evil plays in my narrative. In this book,
evil serves, first and foremost, as a lens that allows us better to interpret and understand the phenomenon of mass atrocities. Viewed through this conceptual lens, the evil of mass atrocities appears as a genuinely universal and a genuinely political—or better, a moral-political—problem. And such an understanding of evil, in turn, provides a fruitful basis for confronting it.

At the same time, an understanding of evil as a ‘crime against humanity’ allows me to reject the equation of evil (i.e. the evil of mass atrocities) with ‘mere’ injustices or human rights violations. While I am perfectly aware that this is a controversial argument—which is why I will defend it in detail in Chapter 2—it is of crucial importance for two reasons: First, mass atrocities such as genocide or crimes against humanity are qualitatively and quantitatively distinct from injustices or human rights violations, and I insist that we need the concept and the language of evil to fully comprehend this distinctiveness. To abandon the vital distinction between ‘wrongs’ (such as injustices or human rights violations) and ‘worst wrongs’ (such as genocide or crimes against humanity) is analytically unhelpful and normatively undesirable; the language of evil, however, can help us to draw this crucial line and thus guide our judgement in particular cases in which the question ‘what ought to be done’ demands an answer. The second reason is that an Arendtian conception of evil as a crime against humanity is not compatible with the highly individualistic human rights framework. In contrast to the liberal idea of human rights, which elevates the individual to its ultimate object of protection, the Arendtian conception of humanity (or common humanity) is not individualistic. Humanity, as Arendt understands it in her reflections on evil, and as I understand it in this book, is a collective that is constituted, sustained and nurtured by a genuine plurality of religious beliefs, moral and ethical norms, cultural traditions and political ideas; the object of protection, therefore, is our common humanity that is threatened and can be seriously violated by attempts to eradicate human plurality and diversity. The concrete potential of an Arendtian conception of evil as a crime against humanity, then, is that it rejects the counterproductive and dangerous moralism that comes with the equation of evil with human rights violations but, at the same time, provides a conceptual lens through which mass atrocities can be interpreted, understood and, ultimately, confronted as genuinely moral-political problems (Table 1.1).
Table 1.1 Reimagining why and how to confront mass atrocities

| Reimagination                      | Reframing                        | Reconceptualisation               | Creation                           |
|-----------------------------------|----------------------------------|-----------------------------------|-----------------------------------|
| Mass atrocities as evil           | R2P as responsibility to protect humanity from evil | ICC as a bulwark against evil | World order as agonistic global constitutionalism |

Source: Author’s creation

And with this conception of evil as a crime against our common humanity we can see how this book weaves together realist, liberal, cosmopolitan and critical insights: From liberalism and cosmopolitanism it takes the view that mass atrocities are genuinely universal problems that have to be confronted by global institutions. From realism it takes a focus on the harsh realities of political life, a sensitivity to the tragic dimensions of human existence and an aversion to moralism. And from critical scholarship, it takes the idea of human plurality as a moral and political value and an acute awareness of the dangers of de-politicisation. In combination, these elements create an alternative picture of why and how to confront the evil of mass atrocities in world politics: In this picture, mass atrocities are portrayed as a threat to plurality and diversity, which is why genuine attempts to confront mass atrocities appear as efforts to protect human plurality from evil.

1.3 Chapter Outline

This book proceeds in four substantive chapters. After this Introduction, Chapter 2 starts with a basic question: Is it legitimate to use the concept and the language of evil in moral and political thought? In answering this question, the chapter discusses a range of arguments against the use of evil; this discussion aims to demonstrate that these arguments should compel us to develop a cautious and critical conceptual discourse of evil but not to abandon evil altogether. Having thus defended evil against ‘evil-sceptics’, the focus of the chapter shifts from an abstract concept of evil to a more concrete conception of evil; this shift is necessary to explain more concretely what I mean by ‘evil’ and to show how this conception of evil can be applied to the phenomenon of mass atrocities. The central section of Chapter 2, therefore, consists of two parts: In the first part, I outline Hannah Arendt’s account of evil as a crime against humanity,
which constitutes the very core of the conception of evil I develop. The second part of the section complements the first one by demonstrating more concretely the pertinence of Arendt’s ideas and insights for the problem of mass atrocities. Thus, the two parts of this section provide the conceptual lens through which mass atrocities can be interpreted, understood and confronted, and also serve as the foundation for the following chapters on R2P, the ICC and agonistic global constitutionalism.

Having laid the groundwork for the book in Chapter 2, the following two chapters turn to concrete responses to evil: military intervention under the banner of R2P and judicial intervention by the ICC. The purpose of Chapter 3 is to develop a ‘demoralised’ and ‘re-politicised’ vision of R2P by reframing it as a ‘responsibility to protect humanity from evil’; the aim of this reframed vision is to enhance R2P’s discursive potential to guide moral-political judgement and action in the face of harrowing mass atrocities. In a first step, I establish the basis for the chapter by ‘excavating’ R2P’s original purpose and by arguing that the concept was, in fact, created and designed as a response to humanity’s concrete experience of evil. The second section critically engages with a range of critical arguments against R2P and provides tentative responses to these arguments. The heart of the chapter, however, is the third section in which I demonstrate how an Arendtian conception of evil, and the link between evil, human plurality and our common humanity, can be made fruitful for the purpose of reframing R2P as a responsibility to protect humanity from evil. This vision of R2P, as I intend to demonstrate, has the potential to rearticulate the terms of the prevailing discourse surrounding mass atrocity cases, which should encourage military intervention in the face of evil but also constrain intervention in less severe cases.

Turning to the ICC, Chapter 4 argues that the ‘primary purpose’ of judicial intervention by the ICC is to combat evil. The opening gambit of the chapter is to portray the ICC as the culmination of a legal framework that seeks to protect the very idea of humanity (‘humanity’s law’), and to demonstrate that this understanding of the Court is clearly reflected in both the founding vision of the Court and the Preamble of the Rome Statute. In a subsequent step, I reject legalistic attempts to portray the ICC as an exclusively legal, even anti-political, judicial body as unrealistic and counterproductive. The aim of this step is to paint a picture of the ICC as a ‘political actor’ that is a part of—or a tool in—the global political struggle against evil. Moreover, I intend to demonstrate that it is not in the ICC’s interest to pursue justice whatever the cost and that it, in fact,
is in the ICC’s interest to act as a flexible actor in a global struggle against mass atrocities. In the final section, the chapter probes the pivotal role of the ICC prosecutor in this struggle. Drawing on Aristotle’s conception of *phronesis* (practical wisdom), I argue that it is his/her *phronesis*, his/her ability to exercise moral-political judgement, which primarily determines whether ICC intervention is conducive or deleterious to the primary purpose of combatting evil.

The final chapter broadens the focus of the book by probing R2P’s and the ICC’s place and role in the changing landscape of contemporary world order. Chapter 5, therefore, represents the continuation of a path that has been carved out by the previous chapters, and attempts to develop an answer to the question of how to justify the establishment of an overarching world order in a world that not only is but, crucially, ought to be inherently pluralistic. The answer to this question, I suggest, lies in the development of an ‘agonistic global constitutionalism’. In a first step, I build a conceptual framework for the chapter by introducing the three elements of an agonistic global constitutionalism. Having done so by providing a somewhat programmatic overview of liberal constitutionalism, political agonism and global constitutionalism, the second section turns to a more direct discussion of Jürgen Habermas’ vision of a constitution for world society, James Tully’s account of constitutional agonism and Chantal Mouffe’s agonistic pluralism, The purpose of this critical discussion is to tease out more clearly the necessary elements and the central problems that an agonistic global constitutionalism must address. This, in turn, paves the way for the third and central section of the chapter: In this section, I elaborate an agonistic global constitutionalism that incorporates some ideas of Habermas, Tully and Mouffe, but is ultimately—and certainly not by accident—most strongly influenced by Arendt’s political thought.

I will conclude with a chapter that is structured around the two concepts of ‘tragedy’ and ‘hope’. The chapter, commences with a clarification: By drawing on the concept of a ‘critical ethos’, I will demonstrate that and how this book contributes to critical theory. Subsequently, after a summary of the main arguments, I will point to some of the limitations of my analysis and identify avenues for further research. Finally, I will come back to a point that I develop in more detail in Chapter 5—that evil can never be eradicated as it is, tragically, both an expression of and a threat to our common humanity—and argue that this tragedy at the heart of the human condition should be understood as a source of hope.
1.4 Conclusion

In *Frames of War* Judith Butler insists that the point of her highly critical discussion of the media’s portrayal of violence and armed conflict ‘is not to paralyze judgment or to undermine normative claims, but to insist that we must devise new constellations for thinking about normativity if we are to proceed in intellectually open and comprehensive ways to grasp and evaluate our world’ (2009: 144–145). This, I think, is an important proposition. It stresses the crucial importance of both normative claims and judgement for political action but, at the same time, urges us to be suspicious of existing normative frameworks that might, as Butler contends, all too easily lead to an arrogant politics of imposition and imperialism (2009: 37). What Butler wants us to address, in other words, is the question of how to retain and cultivate our ability to judge while constantly reflecting on the normative standards that guide our judgements of, and responses to, political violence. And in addressing this question, I think, ‘the word that cannot be avoided’ is ‘imagination’ (Hampshire 1989: 125).

It is, after all, a lack of scholarly imagination, I have suggested in this Introduction, that has reinforced a rift between realists and critical scholars on the one side, and liberals and cosmopolitans on the other. It is a lack of imagination that seems to leave us with the unedifying options of liberal utopianism, realist cynicism or critical relativism. My aim in this book, therefore, is to create an alternative picture: This picture weaves together realist, liberal, cosmopolitan and critical insights: From liberalism and cosmopolitanism, it takes the view that certain evils are genuinely universal problems that have to be confronted by global institutions. From realism, it takes a focus on the harsh realities of political life, a sensitivity to the tragic dimensions of human existence and an aversion to moralism. From critical scholarship, finally, it takes the idea of human plurality as a moral and political value and a sensitivity for the dangers of de-politicisation. In combination, these elements create an alternative picture of why and how to confront mass atrocities in world politics: In this picture, mass atrocities appear as a threat to plurality and diversity, which is why genuine attempts to confront mass atrocities appear as efforts to protect human plurality from evil.

Some might, of course, doubt that creating a different picture is enough. They might object that the disclosure of an alternative picture—indeed, an alternative world—is a purely academic exercise with scant
potential to affect ‘real’ politics. The really important task, they might say, is not only to interpret (or reimagine) the world but to change it.\textsuperscript{35} This objection, however, is based on a simplistic understanding of the complex relationship between ‘reality’ and the ‘imagination’ in political life, a problem whose significance can hardly be overstated.\textsuperscript{36} For what we (uncritically) accept as ‘reality’ can easily become a straitjacket that paralyses creative thinking and condemns us to a conservative affirmation of the status quo; to liberate us from this straitjacket, we have to activate the liberating powers of the \textit{imagination}. Simultaneously, though, the here and now has to serve as a necessary anchor for our concepts, ideas and theories; our imagination, therefore, must be constrained, tied, as it were, to the anchor of reality lest it becomes meaningless or even dangerous. In moral and politic life, then, free-flowing imagination without an orientation towards the real world remains empty; a realism too closely shackled to the status quo, a realism that is oblivious to the liberating role of the imagination, remains blind.

The point, in other words, is that disclosing a different picture of the world, getting out of the counterproductive picture that holds us, our language and our imagination captive, \textit{is} a decisive step towards change. For how could we ever change the world without being able to create an alternative—yet realistic—picture of it?

\textbf{Notes}

1. In the award-winning documentary \textit{Goodbye Aleppo} (Garabedian 2018), four citizen journalists record their final days in the besieged and war-torn city of Aleppo. This is, at any rate, a deeply impressive and gripping account of the violence, the horrors and the loss that people experienced as the government troops advanced.

2. The exchange between Power and Churkin is summarised by Lauren Said-Moorhouse for CNN (2016).

3. At the time of writing (April 2020), the conflict has been overshadowed by the outbreak of Covid-19. It must be noted, though, that in the Idlib province one of the bloodiest chapters of the war is currently written.

4. A comprehensive number of casualties widely accepted internationally was issued by the Syrian Center for Policy Research in 2016: 470,000 (2016: 61). A more recent number was issued by the Syrian Observatory for Human Rights (in March 2020), which estimates that 586,100 have been killed since the start of the revolution in March 2011.
5. I will problematise the relationship between globalisation and evil in Chapter 2.
6. I use the terms international relations/politics and global politics interchangeably. While states are (still) the central actors in the international/global arena, it seems obvious today that the study of international/global politics cannot be limited to states. In fact, I increasingly prefer the term ‘world politics’; however, even this term, as Sergei Prozorov’s (2014a, b) ontological study on the concepts of ‘world’ and ‘politics’ makes clear, is not unproblematic.
7. Why this focus on R2P and the ICC? The answer is that both are relatively new international tools to combat mass atrocities; it is their explicit limitation to mass atrocities that allows me to reframe and reconceptualise them as responses to ‘evil’ (see below). The primary purpose of, and ultimate justification for, military and judicial intervention, I argue, is not to combat injustices or human rights violations but, in fact, to combat evil; as such, R2P and the ICC can and must be distinguished from international tools with a broader human rights focus (e.g. the UN Human Rights Council). Of course, military and judicial intervention are not the only possible responses to mass atrocities (Pattison 2018). It is, however, beyond the scope of this book to analyse if all of them can be reframed as responses to evil.
8. Nicholas Wheeler coined the phrase ‘saving strangers’ in what is still one of the most insightful and sophisticated studies of the concept of humanitarian intervention (2003). I will use this phrase throughout the book.
9. In this book, I use the terms ‘morality’ and ‘ethics’ synonymously.
10. It is, of course, true that labels such as ‘realism’, ‘liberalism’, ‘cosmopolitanism’ and ‘critical theory’ are (not always unproblematic) simplifications; it is also true, though, that they are widely used as organising concepts in the IR and political theory literature. Thus, while I acknowledge the ideal-typical nature of these categories, the picture of a rift between liberals/cosmopolitans and realists/critical scholars is, nonetheless, a useful heuristic device for our present purposes.
11. The idea of international intervention has become so closely associated with ‘liberalism’ that many commentators use the term ‘liberal interventionism’; see, for example, Plant (2008), Daddow and Schnapper (2013), and Lipsey (2016).
12. This book is, indeed, influenced by what is often referred to as ‘classical realism’. Canonical expressions of classical realism are Morgenthau (1967, 1968), Niebuhr (2008, 2010), and Carr (2016). I am also influenced by the so-called ‘new realists’ in political theory; see Williams (2005) and Geuss (2008). On the realist critique of moralism, see Coady (2010).
For outstanding collections of realism in IR and political theory, see Bell (2009) and Sleat (2018).

13. The label of ‘critical theory’ is often used to describe scholars (e.g. Marxists, post-Marxists, post-structuralists, feminists, post-colonialists) who seek to lay bare the hidden power relations and practices of dominance at play in political life (see, however, my discussion of ‘critical theory’ in Chapter 6). These scholars tend to criticise international intervention as a dangerous form of liberal imperialism; see, for example, Chomsky (1999), Chandler (2004, 2005), Cunliffe (2012, 2020), Coady et al. (2018), and Zehfuss (2018). I will engage with the arguments of critical theorists throughout this book. Let me emphasise, though, that it is, indeed, one of the central purposes of this book to defend international intervention by demonstrating how intervention can become a tool to protect plurality. As such, this book is not only strongly influenced by some of the arguments of critical scholars but, as I will make clear in the conclusion, seeks to make a contribution to critical theory. For overviews of the role of critical theory in IR, see Roach (2007), Edkins and Vaughan-Williams (2009), Rengger and Thirkell-White (2011), and Devetak (2018).

14. The attention R2P receives in academic (and non-academic) circles recently culminated in the publication of the massive Oxford Handbook of the Responsibility to Protect (Bellamy and Dunne 2016).

15. The reason for this is that many advocates of R2P understood and understand that it is, as it was in the case of Libya (Bellamy 2011: 267), sometimes impossible to anticipate and prevent the outbreak of a conflict.

16. There are countless examples in the literature that insist on the continuing relevance of military intervention. A small selection is: Nardin and Williams (2005), Hurd (2011), Pattison (2012), Hehir (2012), and Tesón and van der Vossen (2017).

17. For an overview of the intervention, see the contributions to Ethics and International Affairs’ ‘Roundtable’ on ‘Libya, RtoP and Humanitarian Intervention’ (2011).

18. Note that under the three-pillar-strategy of the 2009 R2P report of the Secretary-General even pillar 3, which establishes the ‘responsibility of Member States to respond collectively in a timely and decisive manner when a State is manifestly failing to provide such protection’ (2009: 9), is not limited to military intervention.

19. I borrow the expression ‘a wager lost by winning’ from Nicholas Rengger (2011) who uses it in a slightly different manner to expose the dangers of the ‘triumph of Just War Theory’. Rengger, of course, acknowledges that he himself was inspired by the novelist John Brunner.

20. On the meaning of ‘responsibility’ in R2P, see Glanville (2011), Welsh (2012), and Erskine (2016).
21. I prefer the term ‘nature’ to ‘identity’ as the former has a more permanent meaning whereas the ‘identity’ of an actor is never fixed.

22. In my 2018 article I employ the term ‘traditionalists’ to describe scholars who portray politics as the ICC’s bête noire and juxtapose them with ‘non-traditionalists’. I now think that it is better to speak of a ‘legalistic’ and a ‘non-legalistic discourse’ as too many leading scholars (such as William Schabas, Carsten Stahn or Robert Cryer) cannot be neatly placed into one of the two camps.

23. A partial exception to this is Mark Kersten (2016). While Kersten rightly portrays the ICC as a political actor (2016: 163–172), he does not seem to realise the constructive potential of this step for the identification of the ICC’s primary purpose.

24. Statements that reflect such a belief in a ‘harmony of purposes’ are United Nations (1998–1999) and Cassese (1998: 6).

25. Examples of such a legalistic take on global constitutionalism are Fassbender (1998), Burke-White and Slaughter (2002), Peters (2009), Kumm (2013), and Bhandari (2016). See, however, the much more balanced Handbook on Global Constitutionalism (Lang and Wiener 2017).

26. A selection of the primary literature on agonism is: Connolly (1991, 1995, 2005), Tully (1995, 2002, 2008a, b), Honig (2000, 2003, 2011, 2017), and Mouffé (2005, 2006, 2013). Useful introductions are: Schaap (2007, 2009), Wenman (2013), and Wingenbach (2011).

27. Note that Wiener’s A Theory of Contestation (2014) is a shorter and more programmatic follow-up to The Invisible Constitution.

28. Many agonists downplay the fact that agonism has a normative dimension. In Chapter 5, I will argue in detail, however, that agonism is based on normative values such as equality, human freedom and, most importantly, plurality and that, as a consequence, these values must be defended against those who reject or violate them.

29. The idea of the Grundnorm (basic norm) is associated with Hans Kelsen (1945, 1959, 1991, 2009), who represented legal systems as hierarchical systems of norms in which each higher (and more specific) norm draws its validity from a lower (and more general) norm. Both Wiener and I use the term in a less ‘legally technical’ sense than Kelsen, understanding the Grundnorm as the most foundational norm that justifies, from a normative perspective, the creation of a global constitutional order.

30. I omit citations here because, as we will see in Chapter 2, Arendt’s reflections on evil are scattered throughout her entire oeuvre. The secondary literature on Arendt is vast and it is impossible to give a concise overview here; however, an outstanding introduction, which demonstrates why we should read Arendt ‘now’, is Bernstein (2018). For applications of Arendt’s thought to international politics, see Lang and Williams (2008), Hayden (2009), and Owens (2009).
31. The concept of ‘moral-political judgement’ plays an important role in this book. What we can see already at this point, though, is that evil not only is a judgement but also is a (necessarily vague) guideline for the exercise of judgement.

32. One of the most influential attempts to frame crimes against the individual as a crime against humanity is Ruti Teitel’s *Humanity’s Law* (2013); see the discussion in Chapter 4.

33. Again, this understanding of the concept of ‘common humanity’ is controversial (even from an Arendtian perspective); I will, however, defend it in Chapter 2.

34. Throughout this book I use the hyphenated expression ‘moral-political’; I borrow this expression from Richard Bernstein (1991) to refer to the intertwined nature of politics and morality.

35. This, obviously, is a reference to Marx’s eleventh thesis on Feuerbach; see Elster (2008: 22).

36. It should be noted, though, that—interestingly enough—political realists have more recently taken up this important issue. Mathias Thaler has not only published a scintillating book in which he seeks to ‘engage the imagination productively’ (2018: 34) to think through problems of political violence, but also edited, together with Mihaela Mihai, a special issue on Political Violence and the Imagination in *Critical Review of International Social and Political Philosophy* (2019). The usual starting point for discussions around the relationship between (political) reality and the imagination, however, is Raymond Geuss’ (justly lauded) *Politics and the Imagination* (2010).

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