**Moral impact theory:**

**another problem with the moral impact theory**

idea of settlement

* there is no settlement to the law under the MIT because it is always contentious and its identification requires engaging in all-things-considered reasoning

does it allow for settlement of a sort…?

* law can make what were unclear moral obligations more particular
* that means that there will be less disagreement
* when people engage in all-things-considered reasoning, they will be more likely to come to the same conclusion
* but we do not have anything like authority or planning, which involves not engaging in all-things-considered reasoning
* different from Shapiro’s theory

now Intl Law

Assume a law prohibiting genocide – peremptory

Binding on nations

can positivists explain this?

Austin – no – all law is a command of a sovereign

Hart –

Dworkin claims no

* no agreed upon rule of recognition
* no set of officials to agree on a rule of recognition
* even if we speak of the officials of nations generally, this cannot explain how law is binding on those who do not participate in the rule of recognition

Dworkin claims that positivists must see int’l law as based in consent

* tied to the idea that officials of a nation agree that the nation is bound

but cannot explain its binding nature

indeed, cannot explain how a nation that actually consents to a treaty is bound if its legal practices change such that it no longer considers itself bound

the real problem is that law is relative to a community for the positivist but int’l law is not relative to a community

this suggest a moralistic conception of the law similar to the moral impact theory