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PL 620/621 Justice, Violence and the State
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University of Kent at Canterbury

JUSTICE, VIOLENCE AND THE STATE

The course will introduce you to some of the most significant and challenging topics in legal and political philosophy, and will provide you with the conceptual resources to address these issues cogently: Under what circumstances might it be permissible to use violence to further political goals? What distinguishes different sorts of political violence? Ought the state to have monopoly over the legitimate use of coercive power?

Philosophical and wider normative interest:
- offers test or limit cases for central concepts, their possible interactions, and respective limitations, incl. political legitimacy and political obligation, authority, autonomy, and power;
- identifies and explores some implicit tensions within the current thinking on pressing matters of domestic, international, and global justice that otherwise would remain unacknowledged viz. unaddressed;
- demonstrates the extraordinary significance of philosophical ideas in the real world, resp. the great intellectual responsibilities we philosophers have.

Course outline: 10 lectures and seminars on core and emerging topics, e.g. in the philosophy of international law, cf. Module booklet on Moodle.

Lecture 1: Political Legitimacy

Main questions:

What is the relationship between political legitimacy and the justification of coercive power? Is political legitimacy necessarily confined to a nation state and its institutions? Is democracy a prerequisite for political legitimacy?

Nature and scope of political legitimacy: an initial topography

Political legitimacy is closely related to the concepts of authority, power, and political obligation. The relationship can be understood in either 1) purely descriptive or 2) normative terms, or 3) a mixture of both.

1) Legitimacy amounts to the actual belief (even 'faith') that a person or an institution has the right to exercise authority over us and that we have a corresponding duty to obey (cf. Weber 1964);
2) Legitimacy offers a standard for the acceptability of political authority and often, but not always, political obligation (cf. Rawls 1993; Buchanan 2002);
3) Legitimacy cannot be addressed at the level of general theory, the historical context of justificatory frameworks is just as important (Habermas 1990).

Until recently, there has been an exclusive focus on the state, and it is still considered by many as the rightful primary focus for discussions of political legitimacy. 'Nation state' is often used to disambiguate with other senses of 'state' (e.g. different states or 'provinces' of a nation state as a federation of these provinces). How is the (nation) state to be understood? It is rarely explicitly defined. Central assumptions:

- primary form of political organisation;
- different from government; and the law of the land;
- successfully claims the monopoly of the legitimate use of physical force within given territory (cf. Weber, 'Politics as a Vocation', 1918).

There is some continuity with the classical conception of sovereignty: each state has absolute and unconstrained authority within its territory (cf. Hobbes, *Leviathan*). Implication: there can be no international law in the strict sense. There is, however, some discontinuity too: contemporary philosophers reject the notion of absolute political authority: in fact, various kinds of constraints are deemed constitutive of it (e.g. Buchanan 2002: the use of political power is legitimate only in so far as it is morally justified): hence, the interest of the normative approach to legitimacy, and the possibility of international law (the topic of next lecture).

Discussion:

1. Is there a significant difference between political and expert authority? If so, why? If not, why not? Illustrate your answer.
2. Identify a particular instance of political obligation that you accept as legitimate. Explain its salience.
3. Briefly describe a case that speaks in favour/ against confining political authority to the nation state.

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Can political authority ever be legitimate? The anarchist challenge.

In essence, the challenge is as follows: If the authorities are wrong, they have no power to obligate us. If they are right, the obligation doesn't flow from the authorities' alleged power to obligate us, but from the content of what they require us to do. In other words, political authority is never legitimate in its own right. This position, 'philosophical anarchism' has been famously defended by Wolff (1970), see also Shapiro 2002 for a critical analysis.

Philosophical anarchists identify an underlying contradiction between moral autonomy and political authority:

1) an autonomous person takes responsibility for her actions in light of what she reflectively acknowledges as her moral duty;
2) an autonomous person does not follow orders blindly. If she follows them at all, it is for reasons of her own.
3) Hence: political authority lacks moral validity.
4) Hence: political authority can never be legitimate.

'Political authority' here stands for the right to rule. The anarchists do not deny that there are de facto authorities that can wield political power. However, their ability to compel compliance should not be mistaken for 'political legitimacy'.

Discussion:

1. If legitimate authority is possible, then 'just following orders' can be justified. Do you agree? If so, offer an example. If not, offer a counterexample.
2. How would you distinguish political and/ or legal from moral obligations?
3. Briefly describe a case that speaks in favour/ against philosophical anarchism.

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Three replies to the anarchist challenge:

1) *Consent theory*.

Basic idea: political authority is legitimate because the people over whom it is exercised consent to it.

The most influential historical precursor of this central strand of theorising about political legitimacy is John Locke's *Second Treatise on Civil Government*. A counterfactual hypothesis: a state of nature where every individual is a sovereign; however, in this state of nature, the natural law is unstable and unenforceable. Hence: the need for a civil state that secures the natural law and protects everyone's basic rights. The civil state has political authority: this has been transferred from the individuals to the new government by virtue of the social contract that these individuals have entered. Contemporary philosophers working in this tradition: Nozick (1974) and Simmons (2001).

Varieties of consent: 'originating consent' (see above) as opposed to 'joining consent' (continued residence); explicit vs. tacit consent; hypothetical vs. actual consent. (cf. Buchanan 2002 for a general critique).

Reply: being consensual, political authority doesn't go against people's will; hence: it doesn't undermine, but follows from individual autonomy.

2) *The Service conception of legitimate authority*

Basic idea: political authority is legitimate to the extent that it serves the people over whom it is exercised (Raz 1986). The service provided is, in essence, to compensate for various limitations or shortfalls of rationality. The authorities achieve that by providing people with a special category of reasons, the so-called pre-emptive reasons: unlike ordinary reasons, authoritative directives do not just identify for us certain actions as worth undertaking; more importantly, they pre-empt other reasons that would support alternative courses of action to become salient for us.

Reply: political authority supports and corrects personal deliberation; hence: it doesn't undermine, but supports individual autonomy.

3) *Associative theories*

Basic idea: political authority is legitimate in virtue of what we morally owe to each other. A possible way to flesh this out: political authority is legitimate to the extent that it creates socially necessary, empowering, and fair institutions and procedures that make it possible for us to pursue meaningful projects (cf. Shapiro 2002).

Reply: legitimate political authority is a condition of possibility for personal autonomy; hence: the contradiction between authority and autonomy identified by the philosophical anarchists is only apparent.

Implications for democracy:

Democracy would not be considered a prerequisite for political legitimacy on all conceptions. In fact, on some of them, democratic processes would be subject to certain constraints in order to be deemed legitimate. More on this in the forthcoming seminar discussion of Buchanan (2002) this afternoon.

Discussion:

1. Which reply to the anarchist challenge is the most persuasive? Is it successful?
2. Provide a couple of examples to illustrate the notion of pre-emptive reason. Would your examples support a service conception of authority?
3. Provide an example when consent to be treated in certain way would not suffice to justify been treated in this way.

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Required seminar reading.

Buchanan, A. "Political Legitimacy and Democracy", Ethics 112/4 (2002): 689-71. An electronic copy of the paper is downloadable via the University Library website.

References:

Habermas, J. *Moral Consciousness and Communicative Action.* Cambridge: MIT, 1990

Nozick, R. *Anarchy, State, and Utopia.* Oxford: Blackwell, 1974.

Rawls, J. *Political Liberalism.* New York: Columbia University Press, 1993

Raz, J.*The Morality of Freedom*. Oxford: OUP, 1986.

Shapiro, S. 'Authority' In J. Coleman and S. Shapiro (eds.), The Oxford Handbook of Jurisprudence and Philosophy of Law. Oxford: OUP, 2002.

Simmons, A.J. *Justification and Legitimacy: Essays on Rights and Obligations.*Cambridge: CUP, 2001.

Weber, M. *The Theory of Social and Economic Organisation*. New York: Free Press,1964.

Wolff, R.P. *In Defence of Anarchism.* Berkley: University of California Press, 1970

Further suggested readings:

Morris, C.W. 'The State'. In G. Klosko (ed.) *The Oxford Handbook of the History of Political Philosophy.* Oxford: OUP, 2011.

Peter, F. 'Political Legitimacy', *The Stanford Encyclopedia of Philosophy* (Summer 2010 Edition), Edward N. Zalta (ed.), URL = http://plato.stanford.edu/archives/sum2010/entries/legitimacy/

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PL 620/621 Justice, Violence and the State
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JUSTICE, VIOLENCE AND THE STATE

Lecture 2: International Institutions

Recap: in Lecture 1, we explored the relationship between political legitimacy and the justification of coercive power. In particular, we considered the issues of whether political legitimacy should be confined to a nation state and its institutions and whether democracy is a prerequisite for political legitimacy.

Main questions:

Might international institutions have political legitimacy in the absence of global democracy? Are they consistent with state sovereignty? Should political legitimacy at international and global levels be construed differently from that of domestic institutions?

Clarifications:

'Institution' will be understood broadly as 'persisting pattern of organised, rule-governed, coordinated behaviour' (Buchanan 2010: 80). So not only WTO and UN, but also environmental regimes, customary international law, and treaty-making count as international institutions. A possible distinction between 'international' and 'global': the political legitimacy of the former might be derivative of that of participating nation states, that of the latter is thought of as self-standing.

Initial topography

A focal point: John Rawls's *The Law of Peoples* (1999) – rejects not only global government but also the desirability of liberal cosmopolitanism, i.e. the 'society of well-ordered peoples' is not governed by the principles of justice as specified in his *Theory of Justice*. Accommodation of 'decent' not only liberal peoples for the sake of international cooperation. Human Rights as subset of the full list of liberal constitutional rights: excl. right to free speech, equal religious liberty, adequate standard of living etc.

Liberal cosmopolitans, e.g. Beitz (1999) and Pogge (2002). Underlying ambition: to extend the Rawlsean framework of domestic justice to encompass international relations and institutions. They also reject a world government as undesirable, but appeal for stringent constraints on state sovereignty and a substantive duty of justice across borders, such as global redistribution of resources (Pogge 2002).

Communitarian critics, e.g. Walzer (1983) of political globalisation as threat to pluralism and the very possibility to a meaningful right to self-determination for both communities and individuals.

Republican philosophers, e.g. Pettit (2010) and Laborde (2010) define a legitimate international order as a global arrangement where domination is effectively avoided: non-dominating, representative states and non-dominating, international institutions. A helpful distinction: agent-relative vs. systematic domination, e.g. international intellectual property rights regime. Bohman (2004): the importance of working toward a transnational democracy: bordered democracies are potentially self-defeating, and allow for unchecked uses of controlling/ domineering power.

Discussion:

1. Provide an example that illustrates the possibility of a meaningful right to self-determination in an international, transnational, or global context.

2. Provide an example where the difference between the liberal and the republican conceptions of freedom becomes apparent (non-interference vs. non-domination). Which one is the more significant in a national/ international context?
3. Briefly describe a case that speaks in favour of/ against transnational democracy.

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In what sense could international institutions have a right to rule?

The question about legitimacy here is understood 1) in normative terms and 2) in contrast to legitimacy of the national state and its institutions.

1) Legitimacy assessments are moral evaluations;
2) Attempt to identify a different, often weaker sense of 'right to rule' in the international realm.

State legitimacy comprises not just a liberty-right to rule (it is o.k. for state agents to attempt to rule), but also the corresponding political obligation to obey incurred by the ruled (they have content-independent reasons to support/ or at least not impede legitimate political authority): exclusive right to use coercion to secure compliance and to prevent others from using coercion.

International legitimacy is rarely construed in such a strong sense. The elements included: morally justified in attempting to rule; providing content-independent reasons for compliance (to states and non-state entities); however, no claim to exclusive right to use coercion (it would make states obsolete).

Why does the legitimacy question matter with respect to international institutions?

Varieties of coordination problems at global level, e.g. ecology, peace, health, migration.

The possibility of a moral not purely instrumental understanding of international law. The ideal of the Rule of Law should also be applicable to international relations: generality; intelligibility; publicity; the presumption against retroactive criminal law; impartiality.

Challenges to international legitimacy

1) Gross imbalance of power: no state-majoritarian democracy and no equal voice for weaker and poorer states: UN Security Council, WTO
2) Unfairness to individuals, indigenous communities
3) Inefficiency and corruption: failure to prevent genocides
4) Threat to state sovereignty
5) No democratic legitimacy at international level: bureaucracy, technocracy, lack of accountability.

Unlike the Anarchist Challenge, these challenges assume that political legitimacy is a coherent concept; however, they deny its applicability to international institutions in their own right (non-derivative applicability).

Discussion:

1. Outline a philosophical position according to which international institutions are a kind of necessary evil.
2. Identify a particular instance of the right to rule applicable to an international institution that you accept as legitimate. Briefly explain why it is/ isn't as extensive as that of a corresponding national institution.
3. Briefly describe a case that speaks in favour of/ against a moral instead of purely instrumental conception of international law.

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Possible replies:

1. *State consent*

Basic idea: transfer of political legitimacy. International institutions are legitimate because they are created, supported, or consented to by states (the legitimate political authorities par excellence).

Two issues: 1) not all states are legitimate, democratic, representative; 2) state consent might be the outcome of 'hard bargaining', e.g. WTO. Nominal as opposed to substantive voluntariness.

Limited reply: international as opposed to global legitimacy; doesn't account for global governance institutions and their legislative functions.

2. *Democratic Legitimacy*

Basic idea: although a fully-fledged global democracy might not be feasible or even desirable, core democratic values can and should be at the heart of legitimate international institutions.

Core 'virtues' for international institutions (Buchanan and Keohane 2006):

- minimal moral acceptability: non-violation of the least controversial human rights;
- comparative benefit: efficiency though not necessarily optimal
- integrity: lack of corruption and endemic incompetence.

A promising reply: democracy as a mechanism to realise publicly the moral equality of persons who have different backgrounds, interests, and evaluative commitments (cf. Christiano 2010). Links international legitimacy to a classical conception of civic trust (e.g. via the notions of transparency, accountability, and trustworthiness)

3. *Human Rights: The Service conception of legitimate authority*

Basic idea: state sovereignty loses its legitimacy if it cannot protect efficiently the basic human rights of the people within the national territory. Neither democratic rule, nor the consent of the ruled is fundamental criterion for the right to rule; instead, either is derivative or indicative only.

Tasioulas (2010) expands on Raz's conception of authority to incorporate international contexts.

Normal Justification Condition (applies to international institutions) = A has legitimate authority over B if the latter would better conform with reasons that apply to him/her if he/she intends to be guided by A's directives than if he/she doesn't (Raz 1986).

Service in the international realm:

- Cognitive advantages at determining what independent reasons apply to local and regional agents;
- Volitional defects, e.g. partiality, wishful thinking of national governments, e.g. the alleged existence of weapons of mass destruction in Iraq as a reason to go to war.
- Procedural benefits, e.g. proper channels for transnational public deliberation, over and above self-interest and bargaining.

A promising reply: takes seriously the moral or normative rationale of political legitimacy. Commitment to moral objectivity.

Discussion:

1. Which reply to the list of challenges to international legitimacy is the most persuasive? Is it successful? Briefly discuss how it addresses what you take to be the most significant challenge.

2. Provide a couple of examples to illustrate the notion of institutional integrity. Would your examples support the conclusion that institutional integrity suffices for political legitimacy in an international context?
3. Does the notion of consent fair better at inter-state level justifications of the right to rule than in domestic contexts?
4. Should non-US citizens have the right to vote in the US presidential elections in light of the global significance of who the US president is?
5. Outline three major obstacles to global democracy. Could and should we try to eliminate them?

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Required seminar reading:

Buchanan, A. and Keohane, R. "The Legitimacy of Global Governance Institutions." *Ethics& International Affairs* 20/4 (2006): 405–37. An electronic copy of the paper is downloadable via the University Library website.

References:

Beitz, Ch. *Political Theory and International Relations.* Princeton: Princeton University Press

Buchanan, A. "The Legitimacy of International Law". In S. Besson and J. Tasioulas (eds.), *Philosophy of International Law*. Oxford: OUP, 2010

Bohman, J. "Republican Cosmopolitanism", *Journal of Political Philosophy* 12/3: 3336–352

Christiano, T. "Democratic Legitimacy and International Institutions". In S. Besson and J. Tasioulas (eds.), *Philosophy of International Law*. Oxford: OUP, 2010

Laborde, C. "Republicanism and Global Justice", *European Journal of Political Theory* 9 (2010): 48–69

Pettit, P. "A Republican Law of Peoples", *European Journal of Political Theory* 9 (2010): 70–94

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Tasioulas, J. "The Legitimacy of International Law". In S. Besson and J. Tasioulas (eds.), *Philosophy of International Law*. Oxford: OUP, 2010

Walzer, M. *Spheres of Justice: a Defence of Pluralism and Equality*. Oxford: Robertson, 1983.

Further suggested readings:

Lu, Catherine, "World Government", The Stanford Encyclopedia of Philosophy (Fall 2012 Edition), Edward N. Zalta (ed.), URL = <http://plato.stanford.edu/archives/fall2012/entries/world-government/>.

Warren, M (ed.) *Democracy & Trust*. Cambridge: Cambridge University Press, 1999

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PL 620/621 Justice, Violence and the State
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JUSTICE, VIOLENCE AND THE STATE

Lecture 3: Political Violence

Recap: In Lecture 2, we continued exploring the concept of political legitimacy. In particular, we considered the issue of whether international and global governance institutions can have the right to rule, on a par with nation states. We then compared the challenges to political legitimacy in domestic and international contexts. The most significant difference that emerged between the two cases had to do with the exclusive right to use coercive power, still firmly associated with sovereignty.

Main questions:

How does the use of coercive power by a legitimate authority differ from political violence? Under what political circumstances might resort to violence be justified?

Initial topography

Three separate conceptions of violence: 1) strict; 2) comprehensive; and 3) legitimist. Each conception links differently to the set of relevant notions: legitimacy, authority, force, power, and coercion; and so prompts different answers to the questions under consideration.

1) Strict conception

Violence involves the intentional infliction of physical injury (e.g. Coady 2008). Violence is a particular way of exerting coercive power. The notion of overpowering is central: 'immediacy and specificity of the pressure' (Coady 2008, 39-40). Strong descriptive component.

Advantages: a) well-aligned with ordinary intuitions: there is something distinctive about the wilful and direct infliction of physical suffering; b) distinguishes between different kinds of influencing others/ securing compliance against/ independently of their will: violence, coercion (e.g. threats), and force (e.g. imprisonment); c) allows for a differential analysis of relevant cases.

2) Comprehensive conception

There are different kinds of violence: 1) personal, incl. physical and psychological; 2) structural or institutional violence, where harm and injury are inflicted over and above the specific contributions of individual agents. Two kinds of peace: negative – absence of personal violence; and positive – the achievement of social justice (e.g. Galtung 1969). Both descriptive and normative ambitions.

Advantages: a) acknowledges unjust social arrangements as a vehicle of grave harm and injury over and above 'personal' violence; b) draws attention to socially licensed forms of violence, incl. personal violence with social or structural causes; c) calls into question the normative significance of distinguishing between actions and omissions, doing and allowing in a number of cases where the infliction of foreseeable harm is avoidable: focus on the manner in which harm is caused may be a distraction (e.g. Glover 1977; Harris 1980).

3) Legitimist conception

Violence is 'the illegitimate or unauthorised use of force to effect decisions against the will or desire of others' (Wolff 1969, 6). Close links to legitimate authority. Two separate interpretations: descriptive and normative, corresponding to *de facto* and *de jure* political legitimacy.

Advantages: a) radical re-interpretation of the distinction between violence and non-violence consistent with philosophical anarchism: questions of legitimacy are either misleading or reducible to questions of justice, viz. moral justification; b) exposes an implicit bias toward the status quo: violence in the descriptive sense is often the only instrument of power (ability to affect change in the social world) available to dissenters/ exploited/ disadvantaged groups in society; c) shows how default preference for non-violent forms of protest could be a sign of hypocrisy:

… the doctrine of non-violence is merely a subjective queasiness having no moral rationale. When you occupy the seats at a lunch counter for hours on end, thereby depriving the proprietor of the profits he would have made on ordinary sales during that time, you are taking money out of his pocket quite as effectively as if you had robbed his till or smashed his stock…A penchant for such indirect coercion (…) is morally questionable, for it merely leaves the dirty work to the bank that forecloses on the mortgage or the policeman who carries out the eviction. (Wolff 1969, 610).

Discussion:

1. Consider the following cases: a) manipulation, b) bullying, c) informal ostracism, d) wasting someone's time. Which ones count as violence and on what conception(s)?
2. Briefly describe a case that speaks in favour of/ against at least two of the conceptions of violence discussed.
3. Provide an example where the normative significance of a distinction between actions and omissions with equally harmful consequences is salient. Alternatively, explain away such an example as misleading.
4. Which, if any of the conceptions discussed is distinctly political?

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Justifications of political violence

1) Legitimacy of the state as protective agency: monopoly of violence in defence of individuals who surrender their unenforceable right to self-defence to the sovereign in exchange of effective protection (Hobbes, *Leviathan*)

2) Romantic view of inter-state wars as a school of virtue: camaraderie, discipline, mutual dependence etc. strengthening the bonds of trust among citizens (von Humboldt, *The Limits of State Action*, Indianapolis: Liberty Fund, 1993)

3) Realism, e.g. 'War is nothing but a continuation of politics with other means'. Heterogeneous tradition. Points of conversion: a) national interest should dominate foreign policy; b) anti-utopianism; and c) anti-moralism.

4) Just War tradition. Two components: *Jus ad Bellum* (specifies the conditions under which it is right to go to war) and *Jus in Bello* (specifies the right way to conduct a war). Major contemporary proponent: Walzer (1977). Central idea of contemporary just war theories: the right to self-defence against aggression understood by means of a domestic analogy, i.e. legitimate self-defence applied to individuals.

5) Violence as means to legitimate (self-)defence in the domestic case: Key constraints (cf. Coady 2008, ch. 3): a) last resort, e.g. dissuasion would not help; b) reasonable expectation of effectively warding off the attack,

not revenge; and c) proportionality, e.g. the attack is not used as an excuse/ opportunity to engage in acts of violence. Possible extension to defence of third parties.

Applicability to international cases of aggression:

a) The individual's counterpart is a legitimate political authority. Implicit bias toward states; yet, sometimes non-state groups might have legitimate authority to use violence, e.g. against the apartheid regime in South Africa (cf. Held 2008, Ch.3);
b) The war must have a just cause: self-defence against aggression, but also humanitarian interventions.
c) Good prospects of success;
d) Proportionality of violence;
e) Right intention.

Discussion:

1. Identify a conception of violence that would support a realist approach to international affairs as illustrated by the much quoted 'War is nothing but a continuation of politics with other means'.
2. Offer an example that speaks in favour/ against making national interest the exclusive focus of international politics.
3. Briefly describe a pair of cases of self-defence: the one legitimate and the other illegitimate.
4. Could the romantic view of international wars still have an appeal today? If so, how? If not, why not? Provide an example.

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Alternative conceptualisations

1) Violence and Power

An important challenge to the apparent consensus that 'violence is the most flagrant manifestation of power' (Arendt 1972, 113). Relevance to the contemporary debates. Violence is distinguished by its instrumental character. It is a means to securing power, but it is also antagonistic to power. Power as end in itself; ability to engage in collective projects; distinguishing feature of the political sphere broadly understood as the sphere of human action. The characteristics of interest to us: unpredictability and irreversibility; the possibility of disinterested, moral concerns. Technology stands to violence in the same way as bureaucracy stands to power.

Power and violence are opposites; where the one rules absolutely, the other is absent. Violence appears where power is in jeopardy, but left to its own course it ends in power's disappearance. This implies that it is not correct to think of the opposite of violence as non-violence; to speak of non-violent power is actually redundant. Violence can destroy power; it is utterly incapable of creating it. (Arendt 1972, 123).

2) Coercion and Credible Threats

A major trend in current thinking about coercion interprets coerced actions as responses to credible threats. From this perspective, coercion takes place only when a 'coercee' 1) is faced with an imminent danger of being made considerably worse off should he/she decline to do what the coercer would like him/her to do and 2) he/she actually acquiesces to the coercive request (Nozick 1969). This could be challenged on the following grounds:

a) The notion of being made 'worse off' is ambivalent: it may refer to either the status quo or some normative baseline; as a result, proposals that count as threats on one interpretation would not be recognised as such on another.

b) Threats are not the exclusive vehicle of coercion (Held 1972): challenge to the assumption that threats, understood as conditional proposals to make someone worse off are categorically different from offers, understood as conditional proposals to make someone better off.
c) Domination may coerce without any explicit demand: self-censorship undertaken in order to avert the infliction of further harm (Pettit 2001), e.g. the fortunes of slaves, serfs, and the destitute greatly depend on their ability to second-guess the will of powerful others and 'volunteer' in the right direction.
d) The increase of options to choose from may curtail the freedom of choice (Dworkin 1988): **i)** more choice may lead to additional responsibilities when things previously considered outside our control become amenable to our intervention; **ii)** more choice makes it more costly to make up one's mind because of the increased complexity; and **iii)** more choice sometimes decreases the likelihood of adopting previously desirable options; over time, these may no longer even be available.

Discussion:

1. Provide an example to illustrate the distinction between power and violence proposed by Hannah Arendt. What does your example tell us about the role of violence in politics?
2. Outline a scenario in which an offer is an effective means of coercion.
3. Are unsuccessful attempts at coercion harmless? Discuss in light of a specific example.

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Required seminar reading:

Robert Paul Wolff, "On Violence", *Journal of Philosophy* 66/19 (1969): 601-616. An electronic copy of the paper is downloadable via the University Library website.

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Hannah Arendt, *Crises of the Republic*. New York: Harcourt, 1972. Essay 'On Violence'.

Tony Coady, *Morality and Political Violence*. Cambridge: CUP, 2008. Chapters 2&3.

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John Harris, *Violence and Responsibility*. London: Routledge, 1980. Chapter 2.

Virginia Held, *How is Terrorism Wrong.* Oxford: OUP, 2008. Chapter 3.

Karl von Clausewitz, *On War.* Princeton: Princeton University Press,1976

Michael Walzer, *Just and Unjust Wars*, Basic Books, 1977

Further suggested readings:

Gerald Dworkin, *The Theory and Practice of Autonomy*. Cambridge: CUP, 1988. Ch. 5.

Virginia Held, "Coercion and Coercive Offers", In J.R. Pennock and J.W. Chapman (eds.), *Nomos XIV: Coercion*, Chicago: Aldine–Atherton, 1972

Robert Nozick, "Coercion", In S. Morgenbesser, P. Suppes, and M. White (eds.), *Philosophy, Science, and Method: Essays in Honour of Ernest Nagel*, New York: St. Martin's Press, 1969.

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JUSTICE, VIOLENCE AND THE STATE

Lecture 4: Law and Ethics of War

Recap: In Lecture 3, we explored alternative conceptions of political violence. In particular, we considered possible justifications of violence in the pursuit of political ends. This enabled us to articulate the reasons for considering interstate war as a paradigm case where questions about political violence have been traditionally addressed. The approaches discussed included: realism, romanticism, and just war theory. We concluded by highlighting the significance of the 'domestic analogy': a just war is like legitimate self-defence.

Main questions:

Should there be a sharp distinction between the laws and ethics of war? How do the norms of war relate to the norms of peace?

Initial topography:

1) War vs. Peace

Underlying challenge: war is inseparable from causing death and suffering, the destruction of property, incl. cultural heritage, and grave damage to natural environment. In short, impermissible actions (from a peacetime perspective) are the tissue of war. Hence: are there two separate sets of norms applying to the realities of war and peace?

Warfare as a breakdown of peace, possibly of law and order altogether. War as anarchy. The limitlessness of war (von Klausewitz 1976). War is unlike a tournament, duel, gladiatorial combat. Implication: there are no norms intrinsic to war as a human practice, any attempt at regulation is bound to fail/ be inefficient.

Alternatively, war is like tyranny (Walzer 1977). The crime of aggression. Violation of state sovereignty as a violation of a political community's right to self-determination and territorial integrity. Key implication: an initial moral asymmetry of the parties at war. The domestic analogy: unprovoked aggression and legitimate self-defence.

2) Jus ad Bellum vs. Jus in Bello

How far does the initial asymmetry go? According to Walzer, it ends with jus ad bellum: the moral equality of combatants is a major tenet of jus in bello. Both just and unjust combatants have the equal right to kill the enemy (in self-defence). Rationale: the assumption of combatants' consent to be attacked (wearing of a uniform). Some important constraints and exception where this assumption is overturned. Implications: 1) a possible route to the 'normalisation' of war: only those who have consented to put their lives at risk are legitimate targets. Supports the Principle of Non-combatant Immunity (non-combatants have not consented to be attacked); 2) the right to go to war does not imply the right to conduct war in any way that would boost the chances for success of the just cause.

3) Morality vs. Laws of War

The initial asymmetry between parties at war is preserved in jus in bello: only the just combatants have the right to kill the unjust ones; not the other way around. Rationale: moral liability to attack (e.g. McMahan 2006): an aggressor does not have the same moral standing as the person fighting him/her off. Negative desert to be harmed attributable to unjust combatants. Key implications: 1) the moral equality of combatants does not have a sound moral justification. Some combatants are not liable to attack; 2) some non-combatants will be (e.g. as a result of their involvement in

getting an unjust war started): non-combatant immunity holds only as a prima facie, not an absolute principle; 3) to avoid even worse violations of fundamental individual rights, the conduct of war has to be regulated by laws that apply equally to both sides, just and unjust combatants: hence, the unbridgeable gap between the morality and laws of war.

4) Collateral Damage vs. Crimes of War

Non-combatant casualties are unavoidable fact of war. Strong reason in favour of pacifism: there are no just wars; all wars are morally impermissible. Alternatively, a distinction is to be drawn between impermissible and regrettable but permissible civilian deaths. The Doctrine of Double Effect is applied to separate out collateral damage from crimes of war: if some conditions are satisfied, no negative moral responsibility is incurred for otherwise impermissible consequences of one's actions. In a nutshell, such consequences are not imputable to the agent if they are only foreseen, but not intended. The relevant conditions are (cf. Coady 2008, Ch.7): 1) neither the action undertaken, nor any of its intended effect should be morally objectionable; 2) the anticipated bad effects should be unintended not just secondarily intended, e.g. as means to further ends; and 3) the foreseen though unintended harm brought about should not outweigh the positive moral worth of the intended outcome. When these conditions are not satisfied alleged 'collateral damage' turns into a putative crime of war.

Discussion:

1. Briefly describe a case that speaks in favour of/ against the 'war as anarchy' as opposed to 'war as tyranny' conception.
2. In what respect is modern warfare like or unlike: a) individual self-defence; b) medieval tournament, c) gladiatorial combat; d) is there a better analogy with a peacetime practice? Provide examples.
3. In light of the domestic analogy, is the moral equality of combatants persuasive? If so why? If not why not?
4. Provide an example where the moral liability to attack makes sense. Alternatively, provide a counterexample showing its inapplicability to warfare.
5. Is the gap between law and morality greater in wartime than in peacetime? Discuss in the context of a specific example, and in light of the alternative conceptions of political violence introduced in Lecture 3.
6. Illustrate the Doctrine of Double Effect: a) in peacetime; b) in war.

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Walzer on Just and Unjust Wars

Central claim: it is almost never right to start a war and it is almost always right to fight a war once attacked. The crime of aggression has two separate categories of victims:

1) The military of the invading country that are turned into (unjust) combatants and legitimate targets of deadly attack (without their consent):

What is important here is the extent to which war (as a profession) or combat (at this or that moment in time) is a personal choice that the soldier makes on his own and for essentially private reasons. That kind of choosing effectively disappears as soon as fighting becomes a legal obligation and a patriotic duty (Walzer 1977, p. 28).

2) The people of the invaded country:

The wrong that the aggressor commits is to force men and women to risk their lives for the sake of their rights (ibid., p.51).

Noteworthy points:

1) Inevitability of deadly attack once aggression takes place. Closely related to
2) The moral significance of the nation-state: political sovereignty and territorial integrity are absolutely worth dying for: people would be defending *their shared* 'way of life'.
3) Political communities as central right-holders; individual rights are interpreted as fully accounted for/ protected from within the framework of political membership.
4) Consent of the ruled implied by de facto political authority.

Possible critiques:

1) Scepticism about national defence as a necessary/ sufficient just cause of war: it depends what kind of nation-state, e.g. does it protect the most fundamental human rights of the people within its territory?
2) Scepticism about the priority of political communities over individuals as primary right-holders: links to the romantic tradition of theorising about war (cf. Luban 1980).
3) Humanitarian intervention should be the paradigm case of just war, not national defence (Shue 1998)
4) Scepticism about the normative significance of consent: too high requirement of consent for the combatants and too low requirement of consent for the non-combatants affected!

Discussion:

1. Offer an example that speaks in favour/ against making national defence the exclusive focus of jus ad bellum.
2. In light of Walzer's conception of political community, should we conclude that patriotism is always a virtue? Provide a supporting example, or a counterexample.
3. Briefly describe a pair of cases of consent (combatant and non-combatant) that would make warfare legitimate. Alternatively, describe a pair of cases that show us why consent does not have such justificatory power.

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McMahan on the Gap between Laws and Ethics of War

Underlying intuition: if the domestic analogy works, it has to also work in jus in bello, not only jus ad bellum. Two meanings of 'innocent': 1) someone who does not pose a threat; 2) someone who does not deserve to be harmed. Just combatants are innocent in the second sense. Hence, the so-called moral equality of combatants is only grounded in prudence, not ethics. The military have the moral obligation to refuse fighting in unjust wars. As McMahan (2006, p. 393) puts it: '*they might be compelled, like those who engage in conscientious objection, to make themselves martyrs to morality.'*

Three possible comebacks for the just war theorist:

1) Hypothetical consent of combatants on both sides.
2) Institutional consistency and commitment: orders are to be obeyed, esp. in the army!
3) Epistemic unfeasibility of the task to discover for oneself whether the war one is fighting in as an ordinary soldier has a just or unjust cause, whether the enemy combatants one has to use potentially lethal force against are morally liable to attack or not.
4) The laws of war aim at limiting the violations of individual rights both in scope and in severity: the laws and ethics of war go hand in hand (cf. Shue 2010).

Discussion:

1. Could there be a war that does not violate any individual rights? Provide an example.
2. Might it be morally permissible to use lethal force in self-defence against people who are innocent in the second, but not the first sense specified earlier? Outline a scenario to illustrate your answer.
3. Describe a case in which disobeying a morally questionably military order is still morally inappropriate.
4. Discuss McMahan's requirement that the military should be ready to be martyred for disobeying unjust orders in light of Wolff's comments on civil disobedience in his article "On Violence" (seminar 3)?

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Required seminar reading:

Jeff McMahan, "On the Moral Equality of Combatants", Journal of Political Philosophy 14/4 (2006): 377-93. An electronic copy of the paper is downloadable via the University Library website.

References:

Tony Coady, *Morality and Political Violence*. Cambridge: CUP, 2008. Chapter 7.

David Luban, "The Romance of the Nation State". *Philosophy & Public Affairs* 9 (1980): 392-397

Jeff McMahan, "Laws of War". In Samantha Besson and John Tasioulas (eds.), *Philosophy of International Law*, Oxford: OUP, 2010

Karl von Clausewitz, *On War*. Princeton: Princeton University Press, 1976

Henry Shue, "Let Whatever is Smouldering Erupt? Conditional Sovereignty, Reviewable Intervention, and Rwanda 1994". In *Albert Paolini et al.* (eds.) *Sovereignty and Global Governance: the United Nations, the State, and Civil Society*, Basingstoke: Macmillan, 1998.

Henry Shue, "Do We Need a Morality of War?" In David Rodin and Henry Shue (eds.) *Just and Unjust Warriors: The Moral and Legal Status of Soldiers*. Oxford: OUP, 2008. Downloadable on Moodle.

Henry Shue, "Laws of War". In Samantha Besson and John Tasioulas (eds.), *Philosophy of International Law*, Oxford: OUP, 2010

Michael Walzer, *Just and Unjust Wars*, Basic Books, 1977, esp. Chapters 2 (downloadable on Moodle) & 4.

Further suggested readings:

Elizabeth Anscombe, "War and Murder". In James Rachels (ed.), *Moral Problems: A Collection of Philosophical Essays*. New York: Harper & Row, 1979.

Warren Quinn, "Actions, Intentions, and Consequences: The Doctrine of the Double Effect" *Philosophy & Public Affairs* 18 (1989): 334–351.

Cheney Ryan, "Self-Defence, Pacifism, and the Possibility of Killing". *Ethics* 93 (1983): 508-524.

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JUSTICE, VIOLENCE AND THE STATE

Lecture 5: Humanitarian Intervention

Recap: In Lecture 4, we explored the relationship between the laws and ethics of war in contrast to the laws and ethics of peace. In particular, we considered the implications of the so-called domestic analogy: a just war is like legitimate self-defence in peacetime. In this context, we discussed the Doctrine of Double Effect and critically examined its ability to reliably distinguish between instances of regrettable collateral damage and punishable crimes of war.

Main questions:

What makes a humanitarian intervention legitimate? How does the theory and practice of humanitarian intervention affect current thinking on national sovereignty and the remit of global and international institutions?

Working definition: threat and/ or use of military force in order to prevent or stop grave violations of fundamental human rights. Humanitarian intervention is unauthorised by the state on whose territory it is to be carried out. The intended beneficiaries of a humanitarian intervention are (typically) not citizens of the state or coalition of states carrying out the intervention.

Initial topography:

1) Humanitarian intervention is a war.

Underlying challenge: war is inseparable from causing death and suffering. Protection of lives by military force will involve the loss of lives. Jus ad bellum conditions apply stringently here. Prospects of success, proportionality, and esp. necessity to use force: recourse to all other means ought to have been exhausted (UN Charter, Ch. VII; Luban 2002)

2) Humanitarian intervention is an asymmetrical war

The intervening parties have not been attacked by the state whose sovereignty they infringe upon. Humanitarian intervention does not seem to be a case of legitimate self-defence. However, it does not seem to be a case of unprovoked aggression either. Specifying the Principle of Non-Intervention (in the domestic jurisdiction of sovereign states): threats to international peace and security are within the remit of the UN.

3) Humanitarian intervention falls within the sphere of international law and order

The legal difference between *bona fide* humanitarian intervention and a war of aggression on humanitarian pretexts hangs on whether the use of force has been authorised by the UN Security Council. Potential gaps between the legality and the justice of specific decisions. Particular concerns about permanent members' right to veto/ ability to sway elected members votes in their favour. The possibility of unauthorised, yet legitimate humanitarian intervention (cf. Franck 2010). But also: the possibility of authorised, yet illegitimate interventions (cf. Zolo 2010).

4) There are close conceptual links between humanitarian intervention and universal human rights

Political function of (a subset of) human rights: to offer a recognised standard for international assessment of whether sovereign states are fulfilling their basic obligations toward the people living on their territories. The Universal Declaration of Human Rights (1948) identifies six groups of rights: **i)** security rights; **ii)** due process rights; **iii)** liberty rights; **iv)** rights of political participation; **v)** equality rights; and **vi)** social rights. The breach of any of them would

make a state liable to some kind of sanction; the most egregious abuses of fundamental human rights could justify humanitarian intervention.

5) Individuals and Groups as human rights-holders

The special place of genocide as a crime under international law. See Genocide Convention (UN 1948):

> Art. 1: The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.
>
> Art. 2: In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (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; (e) Forcibly transferring children of the group to another group.

The distinctive harm of genocide as having one's group identity annihilated/ threatened with annihilation (May 2010). The possibility of distinguishing between states and nations (Ohlin and Fletcher, 2008) and ascribing the right to self-determination to the latter (cf. Lecture 6 on the putative right to secession).

Discussion:

1. Recast an instance of humanitarian intervention in light of the domestic analogy: individual self-defence, prevention of imminent aggression, defence of an innocent third party.
2. Could humanitarian intervention be a war that does not violate any individual rights? Provide an example, or counterexample. Discuss with reference to the Doctrine of Double Effect.
3. Briefly describe a case that speaks in favour of/ against the notion of unauthorised, yet legitimate humanitarian intervention.
4. Provide an example in support of/ against the claim that human rights should be understood as 'resistant to trade-offs but not too resistant'.
5. Consider the definition and instances of genocide specified in Art. 2 above. Is this conception of genocide comprehensive? If so, why? If not, what's been omitted?

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The Legitimacy of Humanitarian Intervention: Alternative Conceptualisations

1) Human rights violations as triggers for legitimate international action: Rawls (1999).

Human rights in the international sphere are the structural equivalent of the two principles of justice as fairness in the national sphere. Underlying question: what terms of cooperation would be (universally) agreeable between free and equal peoples under conditions of fairness? Rational choice under the veil of ignorance. Outcome: very short list of human rights (e.g. some fundamental liberty rights are left out).

2) Human rights violations as direct consequences of inadequate distribution of sovereignty by the international law and order: Macklem (2008).

Hence, there is no such thing as humanitarian 'intervention' in the strict sense, only corrective measures that naturally fall within the international jurisdiction. No violation of domestic jurisdiction occurs. Major implication: revisiting the

nature and scope of sovereignty. Alternative genealogy to the development from a 'state of nature' to civil law and order backed up by monopoly of violence, viz. absolute sovereignty (cf. Lecture 1; also Hobbes, *Leviathan*).

How international law conceives of sovereignty – as absolute or conditional – is not as relevant to either the legality or the legitimacy of humanitarian intervention as the fact that sovereignty itself is an international legal entitlement. If sovereignty was absolute before, it was because of international law; and if sovereignty is conditional now, it too is because of international law. The absolute nature of sovereignty in international law, if it ever existed, never lay beyond international law; it was an international legal product. (Macklem 2008, p. 387)

3) To be legitimate, a humanitarian intervention does not have to follow the letter of international law: Franck (2010)

A legal right to humanitarian intervention (attributable to intervening states). Two desiderata: **i)** clearly defined application, i.e. genocide, crimes against humanity, etc. and **ii)** sufficient protection against aggressive/ imperialist intentions of powerful states, i.e. well-functioning and trusted international institutions in charge of adjudicating whether the conditions for humanitarian intervention obtain or not. The current state of affairs satisfies **i)** but not **ii)**. Hence: unauthorised but legitimate and ex post facto legalised humanitarian intervention (tacit approval by the Security Council). Applicability of mitigation/ exculpation in the international arena. Objective: gradual development of customary international law and evolution/revision of the explicit regulations to match current practice.

4) Unauthorised humanitarian interventions weaken the still fragile foundations of international law and order: (Zolo 2010).

Hence: illegality here is a strong, if not incontrovertible, indication for illegitimacy. The normalisation of unilateral and asymmetrical wars on would-be humanitarian grounds precipitates a return to an international 'state of nature', i.e. anarchy as a result of tyrannical exploitation of positional advantage on the global scene.

Terrorism… could be considered as the anarchic and nihilistic reply to the nihilism of those states attempting to dominate the world through the systematic use of force. Terrorist fundamentalism is a response to the fundamentalism of a power that has the tendency to assume hegemonic and despotic characteristics on a global scale. (Zolo 2010, p. 565–566).

5) Humanitarian intervention is legitimate to the extent that it supports a nation's right to self-determination (Ohlin and Fletcher 2008)

The UN Charter recognises an inherent right to self-defence: no Security Council authorisation is needed in order for a state to defend itself from aggression. Yet, the state might not be the ultimate right-bearer here. Instead, it could be reconceptualised as the expression of a nation's right to self-determination. Hence: the intervening parties coming to the rescue of endangered nations (understood so as to include the groups covered under Art. 2 of the Genocide Convention) does not have to be authorised by the UN Security Council in order to be legitimate.

Because nations have a natural right to self-defence in the face of armed attack, it follows that others have a right to come to their defence as well. (Ohlin and Fletcher 2008, p. 145)

Discussion:

1. To whom should a humanitarian intervention be justified?
2. Does it make sense to attribute the right to humanitarian intervention to intervening states rather than threatened groups? Outline a scenario to illustrate your answer.
3. Briefly describe a case speaking in favour of/ against at least two of the conceptions of legitimate humanitarian intervention discussed.
4. How could the Doctrine of Double Effect be applied to elucidating the normative status of putative humanitarian interventions?

5. Discuss Zolo's critique of unauthorised humanitarian interventions in light of the alternative conceptions of political violence (strict, comprehensive, and legitimist) we considered in Lecture 3.

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Required seminar reading:

Patrick Macklem, "Humanitarian Intervention and the Distribution of Sovereignty in International Law", *Ethics & International Affairs* 22/4 (2008): 369–93. An electronic copy of the paper is downloadable via the University Library website.

References:

Thomas Franck, "Humanitarian Intervention". In Samantha Besson and John Tasioulas (eds.), *Philosophy of International Law*, Oxford: OUP, 2010

David Luban, "Intervention and Civilisation: Some Unhappy Lessons of the Kosovo War". In P. De Grieff and C. Cronin (eds.) *Global Justice and Transnational Politics*. Cambridge (Mass.): MIT Press, 2002.

Jens Ohlin and George Fletcher, *Defending Humanity: When Force is Justified and Why*. New York: Oxford University Press, 2008, Ch. 6. Downloadable on Moodle.

John Rawls, *The Law of Peoples*. Cambridge, Mass.: Harvard University Press, 1999.

Danilo Zolo, "Humanitarian Militarism?". In Samantha Besson and John Tasioulas (eds.), *Philosophy of International Law*, Oxford: OUP, 2010

UN Documents

Charter of the United Nations (1945). See esp. Chapter VII: Action with respect to Threats to the Peace, Breaches of the Peace and Acts of Aggression. URL=<http://www.un.org/en/documents/charter/>

Convention on the Prevention and Punishment of the Crime of Genocide (UN 1948). URL=< http://www.hrweb.org/legal/genocide.html>

Universal Declaration of Human Rights (UN 1948). URL=<http://www.un.org/en/documents/udhr/index.shtml>

Further suggested readings:

James Griffin, *On Human Rights.* Oxford: Oxford University Press, 2008

Larry May, *Genocide: A Normative Account.* Cambridge: Cambridge University Press, 2010. Ch. 12. "Genocide and Humanitarian Intervention"

James Nickel, "Human Rights", *The Stanford Encyclopedia of Philosophy* (Spring 2014 Edition), Edward N. Zalta (ed.) URL = <http://plato.stanford.edu/archives/spr2014/entries/rights-human/>

Michael J. Smith 'Humanitarian Intervention: An Overview of the Ethical Issues', *Ethics & International Affairs* 12/1 (1998): 63–79

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JUSTICE, VIOLENCE AND THE STATE

Lecture 6: Secession

Recap: In Lecture 5, we explored the nature and scope of humanitarian intervention as just war cause within the context of international law and order. In particular, we considered the close conceptual links between legitimate humanitarian intervention, on the one hand, and on the other, grave violations of fundamental human rights as reasons that could override the claim to sovereignty of a (nation-)state. In this context, we discussed the possible tension between human rights as attributed to groups as opposed to individuals only, and critically examined the option of relating sovereignty as a right to self-determination to nations instead of states.

Main questions:

Do (at least some) nations have a right to secede? If so, how is this right to be conceptualised and codified? More specifically, does it derive from a nation's putative right to self-determination?

Working definition: Unilateral (as opposed to consensual) secession is the right of a cultural group, esp. a nation to form a self-governing political community exercising full control over its own territory – by violating the territorial integrity of an existing sovereign state.

Initial topography:

1) Revisiting the central assumption that all (or most) states are nation-states.

Liberal political philosophy (mainstream position) and the international law work with the model of a nation-state where all citizens share the same national identity and language, within a unified legal and political system. Yet, not many actual states are that unitary and homogenous. Moreover, where that has been achieved, it is arguably the outcome of coercive measures aimed at either assimilating or excluding minorities.

2) The moral significance of nations as opposed to other cultural groups

Nation: a group whose members **i)** share a substantial number of cultural features, e.g. language, religion, values, traditions, art, literature etc.; **ii)** identify with these features and **iii)** either possess or aspire to some form of political self-determination (Altman and Wellman 2009, p. 44).

3) The right to secede: moral vs. legal (institutional) interpretations

A moral right to self-determination of some communities, limited by their ability and willingness to protect and respect human rights, but conceptually independent of recognition by the international law and order (Altman and Wellman 2009). Conversely, the right to secede could be seen as inherently institutional: like sovereignty and humanitarian intervention, secession is only possible within the context of well-functioning international law and order: the overarching goals are securing peace and protecting human rights (Buchanan 2004).

4) The right to secede: primary vs. remedial (secondary) interpretations

The dominant view: secession is a remedial right: it is acquired by certain groups as a result of past injustices, e.g. violations of human rights, unjust annexation of territories, violations of previously agreed self-government within the sovereign state (Buchanan 2004). Alternatively, secession is a primary right that attaches to some groups as opposed to mere aggregates of individuals. A distinctive political right to self-determination: being able to create and uphold political institutions that protect and promote a distinctive national culture and identity (Altman and Wellman 2009).

5) The right to self-determination: internal vs. external conceptualisations

Background: The Charter of the United Nations (Art. 1, para 2) endorses the principle of equal rights and self-determination of peoples.

Internal self-determination: self-government, e.g. territorial autonomy within a sovereign state. External self-determination: a nation's right to create its own sovereign state – by violating the territorial integrity of existing multi-national states. Revised remedial account (Seymour 2007): there is a primary right to internal self-determination; when this is not upheld by the sovereign state, the nation acquires a remedial right to external self-determination. i.e. unilateral secession.

Discussion:

1. Is there a right to choose who one's fellow citizens are? If so, what is the nature of this right and how could it be justified?

2. Consider the conception of nation proposed by Altman and Wellman. Is this conception compelling? Provide an example or counterexample to illustrate your answer.

3. Provide an example in support of/ against the following claim:
   …when a nation is sufficiently large, wealthy, politically organised, and territorially contiguous so that it can secure for all individuals in the territory the essential benefits of political association, it has a right to secede and form its own state, as long as it can do so without jeopardising the functioning of the state it leaves behind. (Altman and Wellman 2009, pp. 46-47).

4. Could a right to secession create perverse incentives, i.e. to violate fundamental human rights? If so, would a remedial right be less counterproductive than a primary right? Discuss with reference to a specific scenario.

5. Is the right to self-determination applicable to national groups as opposed to individuals or political entities a plausible notion? Discuss with reference to the following claim:

   On the surface of it self-determination seemed reasonable: let the people decide. It was in fact ridiculous because the people cannot decide until somebody decides who the people are.

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Groups as primary right-holders in political philosophy and international law

1) Background: liberalism vs. communitarianism in 80s and 90s (of the 20th c).

Points of disagreement: the 'unencumbered self' of liberal political theory is an impoverished and dangerous fiction; recognising group-specific rights is a tacit endorsement of oppressive traditions. The emergence of liberal multiculturalism (cf. esp. Kimlicka 1989; 1995): protecting minorities vs. larger societies while at the same time protecting individual members from possible coercion by their group.

2) Two main candidates: national minorities and indigenous peoples

UN International Covenant on Civil and Political Rights (ICCPR 1966)

Art. 27 *In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language*.

Possible critique: it articulates a 'universal and portable right that applies to all individuals but ignores the special protection needed by minorities attached to a 'historic homeland' (Kimlicka 2010, p. 381)

UN Declaration on the Rights of Indigenous Peoples (2007)

Art. 3 *Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.*

Art. 4 *Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.*

Art. 5 *Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.*

Art. 6 *Every indigenous individual has the right to a nationality*.

Possible critique: it may create a perverse incentive for some national minorities.

The limitations of international law?

In both cases, there is an implicit bias toward existing states. The extensive protection afforded to indigenous peoples is still some self-government and territorial autonomy within a sovereign state. No right to secession, except as in de-colonialisation. Moreover, in the case of national minorities, territorial autonomy is still conceptualised as delegation of powers from the central authority, not manifestation of an inherent right to self-determination. In light of global peace and security and the protection of human rights, a universal right to having one's own nation-state is unfeasible and possibly undesirable.

Revisiting the right to self-determination

Important caveat: the right to self-determination is not the only political value recognised by international law: human rights, the rule of law, democracy, equal freedom, etc. are just as important.

Two main contenders: **i)** identity-based and **ii)** territorial conception of self-determination – only ii) is consistent with upholding the other important political values, while i) is eventually self-defeating:

If a state is newly constituted as a vehicle for the self-determination of one people, it will be hard to resist the impression that in some sense members of another people coexisting with them in the same society are second-class citizens, not full members of the polity which exists to vindicate the nationhood of this particular people. (Waldron 2010, pp. 399-400).

The territorial alternative: 'the people of the territory' are just all individuals who live permanently there. No shared identity is assumed. Cultural diversity is to be protected as a framework in which meaningful choices are possible.

Revisiting the central functions of a political community: protecting a particular culture or a 'shared way of life' may be an inherently divisive and a-political approach to sovereignty.

Discussion:

1. Briefly describe a case speaking in favour of/ against the exclusive focus on individual rights in liberal political philosophy.
2. Should indigenous peoples be treated differently from national minorities? Discuss with reference to specific examples.
3. Does it make sense to attribute a legal right to identity-based self-determination to minority groups? Outline a scenario to illustrate your answer.
4. Is liberal multiculturalism a viable option? Provide an example, or counterexample.

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Required seminar reading:

Michel Seymour, "Secession as a Remedial Right", *Inquiry: An Interdisciplinary Journal of Philosophy* 50/4 (2007): 395-423. An electronic copy of the paper is downloadable via the University Library website.

References:

Altman, Andrew and Cristopher Wellman, *A Liberal Theory of International Justice*. Oxford: OUP, 2009. Ch. 3 Secession. E-book downloadable via the University Library website.

Buchanan, Allen, *Justice, Legitimacy, and Self-Determination.* Oxford: OUP, 2004

Kymlicka, Will. *Liberalism, Community, and Culture.* Oxford: Claredon, 1989.

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Kymlicka, Will. "Minority Rights in Political Philosophy and International Law". In Samantha Besson and John Tasioulas (eds.), *Philosophy of International Law*, Oxford: OUP, 2010. E-book downloadable via the University Library website.

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Charter of the United Nations (1945). URL=<http://www.un.org/aboutun/charter/>

Declaration on the Rights of Indigenous Peoples (UN 2007)
URL=<http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf>

Universal Declaration of Human Rights (UN 1948). URL=<http://www.un.org/en/documents/udhr/index.shtml>

Further suggested readings:

Buchanan, Allen, "Secession", The Stanford Encyclopedia of Philosophy (Summer 2013 Edition), Edward N. Zalta (ed.), URL = <http://plato.stanford.edu/archives/sum2013/entries/secession/>.

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JUSTICE, VIOLENCE AND THE STATE

Lecture 7: Revolution

Recap: In Lecture 6, we explored the nature and scope of a putative right to secede. In particular, we considered some conceptual tensions between a right to self-determination as attributed directly to special kinds of groups, i.e. nations and indigenous people, on the one hand, and on the other, a right to self-determination as attributed directly to individuals and only as a consequence of it to various groups. In this context, we discussed possible solutions, such as liberal multiculturalism, aiming to bridge the gap between individuals and groups as primary right-holders, between moral and legal interpretations of a right to secede.

Main questions:

Is there a right to revolution? If so, how is this right to be conceptualised and codified? More specifically, is it compatible with a viable conception of legitimate political authority? Alternatively, is a right to revolution at odds with the very idea of sovereignty viz. political order?

Two definitions: Revolution is 'an attempt to overthrow an existing regime and to replace it with a new one, by violent or at least unconstitutional means' (Buchanan 2013, p. 291). Compare with:

Revolution is a 'i) profound and thoroughgoing substitution of one governing socio-political institution with another ii) achieved through means (revolutionary activities) that involve the spectacular rejection of the authority of both the target institution and its rules' (Smith 2008, p. 408).

Initial topography:

1) In revolution, violence and other morally problematic means are unavoidable: coercion, manipulation, disinformation of fellow oppressed people to incentivise them to join in; acts of terrorism to compensate for inferior military capacity (cf. Buchanan 2013)

Applicability of just war theory to distinguish between permissible and impermissible revolutionary activities. On this view, the key questions involve: What is a just cause for revolution? What is a just conduct in revolution?

2) Revolution does not have to be violent: the publicity condition of rejecting an oppressive authority is the distinguishing feature.

Revolution as a form of protest on the spectrum of radical reform. Separating out state and civil society. Implication: revolution is not morally problematic in itself; it could be consistent with law and order, i.e. revolutionary self-regulation of a civil society as opposed to a coercive regulation of the people by the state (cf. O'Neill 1990).

3) Revolution as an aggregative right to self-defence of the people as individuals against an abusive, hence, illegitimate authority: the Lockean tradition.

> Whosoever in Authority exceeds the Power given him by the Law, and makes use of the Force he has under his Command, to compass that upon the Subject which the Law allows not, ceases in that to be a Magistrate, and acting without Authority, may be opposed as any other Man, who by force invades the Right of another. (Locke, *Second Treatise of Government* II, ch. 18).

4) There can be no right to revolution, for it would be self-contradictory; revolution destroys the very foundations of rights, the civil order: the Kantian tradition.

The reason a people has a duty to put up with even what is held to be an unbearable abuse of supreme authority is that its resistance to the highest legislator can never be regarded as other than contrary to law, and indeed as abolishing the entire legal constitution. For a people to be authorized to resist, there would have to be a public law permitting it to resist, that is, the highest legislation would have to contain a provision that it is not the highest and that makes the people, as subject, by one and the same judgement sovereign over him to whom it is subject. This is self-contradictory, and the contradiction is evident as soon as one asks who is to be judge in this dispute between people and sovereign. For it is then apparent that the people wants to be the judge in its own suit. (Kant, *The Metaphysics of Morals*, *The Doctrine of the Right* VI 320).

5) The Kantian objection can be met in the context of an international law and order: the idea of a politically decentralised global sovereign backing up a legal right to revolution against a geographically and politically centralised sovereign, i.e. the nation state (cf. Smith 2008).

Discussion:

1. Consider the two definitions of revolution presented. How significant are the differences between them? Are they relevant to the moral appraisal of revolution as a collective political act? Provide an example to illustrate your answer.
2. Expanding on the previous question, list permissible vs. impermissible revolutionary activities and explain the rationale of your proposed distinction (in light of your knowledge of just war theory).
3. Provide an example in support of/ against the Lockean intuition about the plausibility of a right to revolution.
4. Provide an example in support of/ against the Kantian argument against a right to revolution.
5. If we agreed with Kant that there is no right to revolution, could we still approve of revolutions that have already happened?

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Revolution through the lens of Just War Theory (Buchanan 2013)

The revolutionary situation as a major obstacle to just revolution: almost impossible to satisfy the principles of *jus in bello*, while at the same time satisfying a core *jus ad bellum* principle: reasonable likelihood of success:

Resolute Severe Tyranny means that an Aspiring Revolutionary Leadership will often face a stark choice between 'the use of morally impermissible coercion against the people they seek to liberate or failure' (*ibid*. p. 296).

To a large extent, the Revolutionaries' moral dilemma has to do with solving a coordination problem. Foreseeable failure of collective rationality in securing an important public good because of self-interested motivation. Each oppressed person might think: 1) whether or not enough people take up arms to make the revolution succeed is not up to me, i.e. I am just one person; 2) if I participate, I take a huge risk (my life, that of my family etc.), so it is rational for me not to take part, but to hope that enough others would; 3) Others would think that way too: hence, I would be foolish to join the revolution.

Revolutionary coercion is meant to offset the disincentives for the oppressed to join in that the Resolute Severe Tyranny has created. Could this coercion be justified/ legitimate?

Buchanan's solution: Coercive imposition of rules only typically (but not always) requires legitimacy. In circumstances where legitimacy cannot be obtained and this is not due to the actions of the agency attempting to coercively establish rules, legitimacy is not a necessary condition for the use of coercion to be justified (ibid., p.310).

The justification test proposed here is whether the Revolutionary Leadership behaves like a legitimate government, in particular, respecting the same moral constraints that a legitimate government would.

Discussion:

1. Briefly describe a case speaking in favour of/ against the idea of revolutionary coercion as a solution to a coordination problem.
2. What forms of revolutionary violence against fellow oppressed people could be justified in light of Buchanan's proposal? Is this persuasive? Discuss with reference to specific examples.
3. If successful, could Buchanan's proposal ground a legal right to revolution?

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Kantian vs. Lockean intuitions about the possibility of a right to revolution (cf. Flikshuh 2008; O'Neill 1990)

1) The Lockean picture: Pre-civil individual rights: life, liberty, property. The civil state does not generate these rights, it only makes them easier to enforce. The right to revolution is conceptually unproblematic at first; however, it would generate problems, such as the paradox of collective irrationality/ individual rationality explored earlier. A conceptual difficulty down the line: how to transition from an essentially private right attributable to individuals as such to a proper public and *ipso facto* collective right. Cf. the publicity condition of revolutions as spectacular rejections of authority mentioned earlier.

2) The Kantian picture: there are only claims to rights before the establishment of a political community with a sovereign in charge of coercion for the sake of protecting everyone's rights. Political co-existence is what generates full-blown individual rights. Civil society is only possible in the context of a sovereign state. On this view, legitimate coercion cannot be unilateral as Lockean self-defence. Instead, it amounts to the *rightful* hindrance of a *wrongful* hindrance of freedom (Flikshuh 2008, p. 391). Sovereignty is crucial here because it allows for a pubic juridical authority that can vindicate the valid but privately unenforceable entitlement claims (all that individuals have in a pre-civil state).

3) The public/private distinction in conceptualising relevant legal/political rights, incl. the right to revolution has important consequences for understanding the relationship between politics and morality. For instance, it would affect thinking about what constitutes 'Supreme Emergency', the permissibility of torture, and the so-called problem of 'Dirty Hands'. In the case of revolutionary violence esp. it helps challenge the polarised picture of oppressive state power vs. individual powerlessness (O'Neill 1990, p. 286). An example: the possibility of political change growing out of moral consciousness: non-violent grass-root revolutions, e.g. most European revolutions in 1989. The public use of reason: alternative conception of reasoning and acting together, for which the coordination problem does not arise.

Discussion:

1. Compare the Lockean and Kantian pictures of legal/political rights. Are they mutually exclusive? If so, which one offers a better conceptual framework for understanding revolutions? Discuss with reference to specific examples.

2. Consider the following thought: *a person who wishes to profess goodness at all times will come to ruin among so many who are not good. Hence it is necessary for a prince who wishes to maintain his position to learn how not to be good, and to use this knowledge or not to use it according to necessity.* (Machiavelli, The Prince. Oxford, 1984, p. 52).

    a) How does this relate to the ethics of revolution? Illustrate you answer.
    b) How does this relate to the underlying issue of the relationship between politics and morality? Illustrate your answer.
3. Identify the strongest reason in favour of/ against revolution as a form of political activism, in light of a specific example/ thought experiment.

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Required seminar reading:

Matthew Noah Smith, "Rethinking Sovereignty, Rethinking Revolution", Philosophy & Public Affairs 36/4 (2008): 405-44. An electronic copy of the paper is downloadable via the University Library website.

References:

Buchanan, Allen, "The Ethics of Revolution and its Implications for the Ethics of Intervention", *Philosophy & Public Affairs* 41/4 (2013): 291-323.

Flikshuh, Katrin, "Reason, Right, and Revolution: Kant and Locke', *Philosophy & Public Affairs* 36/4 (2008): 375-404.

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Locke, John, *The Second Treatise of Government* (ed. by J.W. Gough). Oxford: Blackwell, 1956.

O'Neill, Onora, "Messy Morality and the Art of the Possible: Politics, Morality and the Revolutions of 1989", *Proceedings of the Aristotelian Society* suppl. vol. 64 (1990): 281–294.

Further suggested readings:

Coady, Tony, "Messy Morality and the Art of the Possible", *Proceedings of the Aristotelian Society* suppl. vol. 64 (1990): 259–279

Scarry, Elaine, *The Body in Pain: the Making and Unmaking of the World.* Oxford: Oxford University Press, 1985

Walzer, Michael, "Political Action: the Problem of Dirty Hands", *Philosophy & Public Affairs* 2/2 (1973)

Weinstein, Jeremy, *Inside Rebellion: The Politics of Insurgent Violence*. Cambridge: Cambridge University Press, 2007

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JUSTICE, VIOLENCE AND THE STATE

Lecture 8: Terrorism

Recap: In Lecture 7, we explored the nature and scope of a putative right to revolution. In particular, we considered some conceptual tensions between a right to revolution and the very idea of sovereignty viz. legitimate political authority. In this context, we discussed some possible implications for understanding the relationship between politics and morality, incl. the notion of 'Supreme Emergency', the so-called problem of 'Dirty Hands', and the intuitive appeal of the 'realist' principle 'The end justifies the means'.

Main questions:

Does the term 'terrorism' designate a distinct category of political activism? If so, what are its defining features and on what grounds should it be assessed? If not, what categories could offer better alternatives?

Two definitions:

Narrow: terrorism is i) violence ii) against non-combatants iii) for the sake of intimidation and/or coercion iv) aimed at achieving some political outcome (either a political change or the preservation of the status quo), e.g. Primoratz (2013, p. 24): *The deliberate use of violence or threat of its use, against innocent people, with the aim of intimidating some other people into a course of action that they otherwise would not take.*

Wide: terrorism is a form of political violence whose proximate aim is intimidation and/or coercion, e.g. Held (2004).

Central features: violence and intimidation/ coercion, a contested one: the innocence of the intended victims (cf. Coady 2004).

Background assumptions: i) terrorism is a form of coercion: instrumental character of violence as a vehicle of credible threats; ii) strong presumption against the moral permissibility of terrorism: it shares some of the hallmarks of illegitimate/ unauthorised use of violence.

Initial topography:

1) 'Moralised' approaches: terrorism is unavoidably morally repugnant. It is unjustifiable because its targets are by definition illegitimate: cf. the notion of innocence in contemporary just war theory.

2) Some acts of terrorism are justifiable: terrorism is a warfare tactic meant to compensate for inferior military capacity: cf. the notion of 'Supreme Emergency'. Applicability of just war theory to distinguish between permissible and impermissible acts of terrorist activities, cf. Walzer 1977. On this view, even if we consider the question 'What is just conduct in terrorism?' as superfluous, the question 'What is a just cause for terrorism?' may still be significant.

3) Consequentialist approaches: only the ultimate outcomes matter: if a morally significant political goal will be efficiently promoted by acts of terrorism (and cannot be promoted by less violent/ controversial means), then these acts are morally justified as long as the 'benefits' outweigh the 'costs' (cf. Nielsen 1981).

4) The moral permissibility of terrorism is affected by the issues of whether it is undertaken by state or non-state agents. Points of contention: i) only non-state groups can engage in terrorism, states wage wars; ii) state-

sanctioned terrorism is conceptually possible; it is even less justifiable than non-state terrorism (governments have resort to less controversial means to further political goals).

Discussion:

1. Consider the two definitions of terrorism presented. How significant are the differences between them? Are they relevant to the moral appraisal of terrorism as political activism? Provide an example to illustrate your answer.
2. Expanding on the previous question, list permissible vs. impermissible acts of terrorism and explain the rationale of your proposed distinction (in light of your knowledge of just war theory).
3. Provide an example in support of/ against the consequentialist approach to terrorism.
4. Provide an example in support of/ against the moralised approach to terrorism.
5. Devise a scenario to illustrate the ethical significance/ or insignificance of the distinction between state and non-state groups engaged in terrorism.

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Terrorism through the lens of Just War Theory

1) Revisiting the innocence of terrorist targets. Core idea: Military uniforms fail to draw a morally relevant distinction between legitimate/ illegitimate targets:

- 'Selective terrorism': attacks on government officials etc. who are directly responsible for the wrongs that terrorist actions are meant to right;
- 'No one is really innocent': segments of the general public deemed as complicit in/ benefitting from the wrongs that terrorist actions are meant to right.

2) Applying the constraints of *jus ad bellum* and *jus in bello*: just cause, likelihood of success, ultimate resort, proportionality of the response.

- a consequentialist interpretation:

  Terrorist acts must be justified by their political effects and their moral consequences. They are justified when they are politically effective weapons in the revolutionary struggle and when, everything considered, there are sound reasons for believing that, by the use of that type of violence rather than no violence at all or violence of some other type, there will be less injustice, suffering and degradation in the world than would otherwise have been the case (Nielsen 1981, p. 446).

- a non-consequentialist interpretation: without some use of terrorism, some groups are unlikely to get a fair hearing for their grievances; cf. Young (2004): Two case studies discussed: South Africa and Northern Ireland.

Discussion:

1. Briefly describe a case speaking in favour of/ against a consequentialist justification of some acts of terrorism.
2. Briefly describe a case speaking in favour of/ against a non-consequentialist justification of some acts of terrorism.
3. Under what circumstances, if any, could members of the government/ general public become a legitimate target for terrorist attacks? Discuss with reference to specific examples.

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3) 'Supreme Emergency' as rationale for targeting innocents: the terror bombing of German cities in WWII, 1942. Walzer (1977). Defining feature: imminent threat of immense moral significance.

- extermination and enslavement;
- the survival and freedom of a political community.

4) Terrorism and Human Rights: a limited justification grounded in a conception of distributive justice, cf. Held (2004; 2008). Core elements:

- Human rights violations will occur anyway: background situation in which a group is persistently victimised and excluded from the political process;
- acts of terrorism are the only means to having the human rights of all respected;
- acts of terrorism violate the human rights of members of the privileged group: hence, grave humanitarian harms are being less unequally distributed already in the short term.

Discussion:

1. Is Walzer's conception of Supreme Emergency compelling? Could it extend to non-state groups? Discuss with reference to specific examples.

2. Could violations of human rights be appropriately addressed in terms of distributive justice?

3. Can a conception of distributive justice as limited rationale for terrorism be reliably distinguished from a consequentialist framework?

4. Identify the strongest reason in favour of/ against the moral permissibility of terrorism as a form of political activism, in light of a specific example/ thought experiment.

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Required seminar reading:

Virginia Held, "Terrorism and War", *Journal of Ethics* 8 (2004): 59–75. An electronic copy of the paper is downloadable via the University Library website.

References:

Coady, Tony. "Terrorism and Innocence", *Journal of Ethics* 8 (2004): 59–75.

Nielsen, Kai. "Violence and Terrorism: its Uses and Abuses". In B. Leiser (ed.), *Values in Conflict.* New York: New York: Macmillan, 1981.

Primoratz, Igor. *Terrorism: A Philosophical Investigation.* Cambridge: Polity Press, 2013.

Walzer, Michael. *Just and Unjust Wars*, Basic Books, 1977, chs. 12 and 16.

Young, Robert. "Political Terrorism as a Weapon of the Politically Powerless". In I. Primoratz (ed.). *Terrorism: the Philosophical Issues.* New York: Macmillan, 2004.

Further suggested readings:

Held, Virginia. *How is Terrorism Wrong*. Oxford: OUP, 2008. Chapter 3.

Primoratz, Igor (ed.). *Terrorism: the Philosophical Issues.* New York: Macmillan, 2004.

Primoratz, Igor. "Terrorism". *The Stanford Encyclopedia of Philosophy* (Summer 2013 Edition), Edward N. Zalta (ed.), URL = <http://plato.stanford.edu/archives/sum2013/entries/terrorism/>.

Walzer, Michael. "Political Action: the Problem of Dirty Hands", *Philosophy & Public Affairs* 2/2 (1973)

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JUSTICE, VIOLENCE AND THE STATE

Lecture 9: War on Terror

Recap: In Lecture 8, we explored the nature and scope of the concept of 'terrorism'. In particular, we considered broader vs. narrower conceptions: political violence aimed at intimidation and/or coercion [that might be intentionally directed at non-combatants]. In this context, we continued discussing the relationship between politics and morality, incl. the notion of 'Supreme Emergency', the Machiavellian principle 'The end justifies the means', and a putative distinction between state and non-state groups as terrorist agents.

Main questions:

Can the war on terror be just? If so, what measures could be legitimately adopted by and within liberal democratic states, and what prohibited? If not, how is the war on terror to be resisted?

Initial topography:

1) Should 'the war on terror' be conceptualised in terms of war? Why not use a criminal justice model?

    i. Looking at just war theory for guidance as to what can/ cannot constitute an appropriate response to terrorism (Coady 2005);

    ii. An alternative interpretation: 9/11 attack as a mass murder, not necessarily an act of terrorism, even less a declaration of war (Emcke 2005);

    iii. Misgivings about the 'war on terror' as a hybrid, *unprincipled* model that amalgamates aspects of the criminal justice and the war models leading to the pervasive and long-lasting erosion of human rights, e.g. the creation of the category of 'unlawful combatants' (Luban 2002); see also Nussbaum (2003): a divisive and essentially dehumanising rhetoric of 'us' and 'them' that prevents everyone from appreciating shared humanity.

    iv. 'The war on terror' as an indication and further source of widespread moral corruption/ inarticulacy/ indifference (Pogge 2008). Compare with the notion of 'moral clarity' as poor excuse for not engaging in moral deliberation while (ab)using the vocabulary of moral commitment (Held 2004).

2) Who or what is the enemy of this war? A few possibilities:

    i. Terror;

    ii. Terrorism;

    iii. Dead Terrorists;

    iv. Would-be Terrorists;

v. States that (might) encourage/support/tolerate terrorist groups. Inescapable vagueness leading to moral arbitrariness in picking out 'legitimate targets' and/or allowing, if not promoting a kind of 'double think about the double-effect' (Anscombe 1979). See also Emcke (2005)

Discussion:

4. Consider the following quote: "It would be a striking victory for the terrorist cause if they managed to drive the infidel representatives of liberal modernity into abandoning their liberal heritage in order to combat its enemies." Which of the four approaches to war on terror sketched in 1) above would provide the strongest support for this claim?
5. Provide an example in support of/ against a just war model of the war on terror (counter-terrorism).
6. Expanding on the previous question, list permissible vs. impermissible acts of counter-terrorism and explain the rationale of your proposed distinction (in light of your knowledge of just war theory).
7. Provide an example in support of/ against applying the criminal justice model to state responses to terrorism.
8. Provide an example in support of/ against developing a hybrid war-law model for state responses to terrorism.
9. What does it mean for a war on i. terror/ ii. terrorism/iii. terrorists/ iv. terrorist-friendly states to be a) won/ b) over/ c) lost?

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The War on Terror through the lens of Just War Theory

5) Applying the constraints of *jus ad bellum* and *jus in bello*: just cause, likelihood of success, ultimate resort, proportionality of the response, non-combatant/ innocent immunity.

6) Careful definition of what counts as 'supreme emergency' (cf. Walzer 1977): the relaxation of moral constraints in fighting off 'imminent threats of immense moral significance': the danger of vagueness and self-serving interpretations deliberately conflating 1) extermination and enslavement and 2) the survival and freedom of a political community.

7) Coady's list of impermissible acts in a just war on terror:

i. the use of terror to combat terror;

ii. indifferent or casual attitude to ‘collateral damage’; and

iii. erosion of human rights, civil liberties, and the rule of law.

Discussion:

4. Briefly describe a case speaking in favour of/ against considering each of the items listed by Coady as morally impermissible.
5. Expanding on the previous question, is Coady’s list exhaustive?
6. Would just war theory allow for the use of violence to capture and even kill alleged terrorists?

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Clarifying the underlying presuppositions of a ‘war’ on terrorism

Elements of the war model that are at odds with the law model (Luban 2002):

1) Enemy troops are all legitimate target regardless of degree of personal involvement;
2) Foreseen but unintended killing of innocents might be permissible;
3) Potential to harm is enough for fighting the enemy, no need of actual harm
4) Much weaker requirements for evidence and proof
5) Fighting back is a legitimate response in war: special regard for enemy soldiers. Cf. the moral equality of combatants: they are not presumed ‘war criminals’ merely in virtue of being on the opposite side; POWs are to be treated with respect (cf. Third Geneva Convention stating that they ‘may not be insulted or exposed to unpleasant or disadvantageous treatment of any kind’);
6) State neutrality is permissible in war (no obligation to take sides unless prior binding treaties).

The ‘War’ on terrorism attempts to integrate 1-4 without 5&6. Disturbing outcomes:

i. militarisation of political thinking (Emcke 2005)

ii. weakening of the rule of law (Pogge 2008)

iii. human rights turn out to be less than universal (cf. Luban 2002; Nussbaum 2003)

iv. deficit of political legitimacy: cf. Arendt (1972) on the threat of power, viz. authority collapsing into mere force

v. loss of compassion, humanity, and civic competence (Nussbaum 2003)

vi. trivialisation of torture and other forms of barbarity (cf. Luban 2002; Pogge 2008)

vii. moral torpor: inability to engage in principled, reasoned, and impartial deliberation/discussion about the right course of action (Pogge 2008)

viii. exacerbation of unfair global inequalities via pervasive structures of unchecked domination and its counterparts: exploitation and humiliation (Held 2004; Pogge 2008).

Open discussion:

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Required seminar reading:

Thomas Pogge, "Making War on Terrorists—Reflections on Harming the Innocent", *Journal of Political Philosophy* 16/1 (2008): 1–25. An electronic copy of the paper is downloadable via the University Library website.

References:

Elizabeth Anscombe, "War and Murder". In James Rachels (ed.), *Moral Problems: A Collection of Philosophical Essays*. New York: Harper & Row, 1979.

Hannah Arendt, *Crises of the Republic*. New York: Harcourt, 1972

Tony Coady, "Terrorism, Just War and Right Response". In Georg Meggle (ed.) *Ethics of Terrorism and Counter-Terrorism*. Frankfurt/M: Ontos Verlag, 2005.

Carolin Emcke, "War on Terrorism and the Crises of the Political". In Georg Meggle (ed.) *Ethics of Terrorism and Counter-Terrorism*. Frankfurt/M: Ontos Verlag, 2005.

Virginia Held, "Terrorism and War", *Journal of Ethics* 8 (2004): 59–75.

David Luban, "The War on Terrorism and the End of Human Rights", *Philosophy & Public Policy Quarterly* 22/3(2002): 9–14.

Martha C. Nussbaum, "Compassion and Terror", In James Sterba (ed.) *Terrorism and International Justice.* New York: Oxford University Press.

Further suggested readings:

Igor Primoratz (ed.). *Terrorism: the Philosophical Issues.* New York: Macmillan, 2004.

Igor Primoratz, Igor. "Terrorism". *The Stanford Encyclopedia of Philosophy* (Summer 2013 Edition), Edward N. Zalta (ed.), URL = <http://plato.stanford.edu/archives/sum2013/entries/terrorism/>.

Joseph Raz. *The Practice of Value.* Oxford: Clarendon Press, 2003.

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JUSTICE, VIOLENCE AND THE STATE

Lecture 10: Statelessness

Recap: In Lecture 9, we explored the questions of whether a war on terror can be just or even present us with a coherent notion. In particular, we considered a variety of approaches to state responses to terror, incl. just war theory, human rights universalism, cosmopolitanism, liberalism, and realism (consequentialism). We concluded by articulating the importance of considering both terrorism and counter-terrorism with reference to global justice and fairness.

Main questions:

Why is statelessness harmful? Does it also constitute a particular wrong? If so, whose obligation is to redress this wrong? If not, how are we to think of statelessness? What can we learn by reflecting on statelessness about core notions of legal and political philosophy, such as citizenship, national sovereignty, and the possibility of a legal and political, as opposed to merely economic, international order?

Conceptual clarifications and normative framework:

Stateless person is someone 'who is not considered as a national by any State under operation of its law' (UNHCR 1954):

- different from being a refugee (a person with a well-founded fear of persecution) or an immigrant, although sometimes there could be overlap between categories; more importantly, statelessness falls within the remit of UNHCR: The UN Refugee Agency.

- most stateless people are not international border-crossers (cf. Belton 2011): potential invisibility in international law (at present, there are between 10-12 million stateless people in the world).

- conceptualised in terms of 'profound vulnerability' and potential for 'devastating harm': human rights become unenforceable in the absence of an (internationally) recognised legal status. A few examples: no identity or travel documents, danger of detention, inability to access healthcare, education, social services.

- The two UN Conventions on Statelessness aim to remedy the situation by proposing minimal standards of treatment that are binding but only for states that are signatories.

- the core principle is that no stateless person should be treated worse off than a foreigner with a nationality; moreover, with respect to freedom of religion and elementary education stateless people should be treated on a par with nationals.

Initial topography:

1) Statelessness brings to the fore an apparent tension between sovereignty (political self-determination) as recognised by international law and the Universal Declaration of Human Rights (a centrepiece of international law and order), which states that 'everyone has the right to a nationality'.

   Difficulty:

   i. in the absence of a specific duty to provide the stateless with a nationality, the right to nationality looks like a mere 'manifesto' right;
   ii. a duty to naturalise the stateless who 'lawfully reside' on the territory of a sovereign state would require us to decouple the notions of sovereignty and nationality.

2) Citizenship as Nationality: membership of a political community supported within the framework of a national state:
   i. the 'right to have rights' (cf. Arendt 1968) vs. abstract, unenforceable human rights
   ii. only *de jure* statelessness, but not *de facto* statelessness is addressed by the Conventions
   iii. a new difficulty: the idea of an international action for reducing and eventually eliminating statelessness requires that we reconceptualise citizenship as different from nationality, i.e. citizenship at a transnational level, while at the same time tying it up to the notion of a national state.

   iv. The stateless person as a non-citizen in the strictest sense.

Discussion:

1. Provide an example that illustrates the possibility of a meaningful right to nationality.
2. Does statelessness amount to a loss of freedom? Discuss with reference to alternative conceptions of freedom introduced in earlier lectures, in particular, freedom from non-interference and freedom from non-domination.
3. Expanding on the previous question, should statelessness be considered as a matter of global/international justice?
4. Provide an example in support of/ against the slogan 'citizenship is the right to have rights'.

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Rethinking citizenship in the context of multiculturalism and globalisation

1) Two sides in the classical conception of citizenship (Pocock 1992) that come apart in contemporary conceptions (cf. Kymlicka and Norman 1984):
   i. a desirable/ praiseworthy activity/ shared political practice
   ii. a legal status/ membership

2) Citizenship as a bundle of different categories of rights:
    i. Civil - guaranteeing personal freedom and equal treatment before the law;
    ii. Political – guaranteeing participation in the political process as a voter and/or representative;
    iii. Social – guaranteeing minimum standard of welfare and security as 'the right to share to the full in the social heritage and to live the life of a civilised being according to the standards prevailing in the society' (Marshall 1950).

3) Citizenship as nationality: shared cultural identity as a ground for civic trust.
    i. "Deliberation can only succeed where there exists a fairly high level of mutual trust in the deliberating body, which is why I argue that a shared national identity is close to being a necessary prerequisite" (Miller 2003a, p. 365)
    ii. "We may disagree politically with the other side, we may even despise much of what they stand for … we know that they still have a good deal in common with us – a language, a history, a cultural background. So we can trust them at least to respect the rules and spirit of democratic government" (Miller 2003b, p. 117).

4) Differentiated citizenship
    i. cultural rights: value pluralism and willingness and ability to cross intercultural boundaries (Kymlicka 1995)
    ii. implicit bias toward traditionally privileged groups of citizens in would-be universalist interpretations of citizenship (Young 1989)
    iii. revisiting the public/private distinction (Okin 1992)

Open discussion:

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Required seminar reading:

Kristy Belton, "The neglected non-citizen: statelessness and liberal political theory", *Journal of Global Ethics* 7/1 (2011): 59–71. An electronic copy of the paper is downloadable via the University Library website.

References:

Kymlicka, Will. *Multicultural Citizenship*. Oxford: Clarendon, 1995.

Kymlicka, Will and Wayne Norman, "Return of the Citizen: A Survey of Recent Work on Citizenship Theory", *Ethics* 104 (1994): 352–381.

Marshall, T.H. *Citizenship and Social Class and Other Essays.*Cambridge: CUP, 1950.

Miller, David. A response. In: D.A. Bell and A. De-Shalit, (eds.) *Forms of Justice: Critical Perspectives on David Miller's Political Philosophy*. Lanham, MD: Rowman and Littlefield, 349–372, 2003a

Miller, David. *Political Philosophy: A Very Short Introduction*. Oxford: Oxford University Press, 2003b.

Okin, Susan Moller. "Women, Equality, and Citizenship", *Queens Quarterly* 99 (1992): 56–71

Pocock, J.G.A. "The Ideal of Citizenship since Classical Times", *Queen's Querterly* 99 (1992): 33–55.

Young, Iris Marion, "Polity and Group Difference: A Critique of the Ideal of Universal Citizenship", *Ethics* 99 (1989): 250–274.

UN Documents

UN (1948) Universal Declaration of Human Rights.
URL=<http://www.un.org/en/documents/udhr/index.shtml>

UNHCR (1954). Convention Relating to the Status of Stateless Persons
URL=<http://www.unhcr.org/3bbb286d8.html>

UNHCR (1961). Convention on the Reduction of Statelessness.
URL=<http://www.unhcr.org/3bbb25729.html>

Further suggested readings:

Bellamy, Richard, Introduction: The Importance and nature of citizenship. In: R. Bellamy and A. Palumbo, (eds.) *Citizenship*. Farnham: Ashgate, 2010

Carens, Joseph, "Aliens and Citizens: The Case for Open Borders," in Review of Politics 49/2: 1987:251-273

Cole, Philip, Introduction: 'Border crossings' – the dimensions of membership. In: G. Calder, P. Cole and J. Seglow (eds.). *Citizenship acquisition and national belonging: migration, membership and the liberal democratic state*. Basingstoke: Palgrave Macmillan, 2010

Honohan, Iseult and Marit Hovdal-Moan (eds.) *Domination, Migration and Non-citizens: Critical Review of International Social and Political Philosophy* 17(1) 2014

Leydet, Dominique, "Citizenship", *The Stanford Encyclopedia of Philosophy* (Spring 2014 Edition), Edward N. Zalta (ed.), URL = <http://plato.stanford.edu/archives/spr2014/entries/citizenship/>