Luban, “Just War and Human Rights”

Argument Against Walzer

Background

- Legalist paradigm and rights of states to common life not limited to democracies.
- The “consent” of individuals is not limited to democratic states.
- It is “aggression” to attack a non-democratic state too.
- “Common life” not primarily shared morality or ideas. What is it?
  - Language?
  - Shared history?
  - Religion?
  - Ethnicity?
  - Shared morality? (Not primary criterion)

Walzer and “UN Definition

- Aggression is "armed intervention in a state's affairs.
- Aggressive war is illegal war.
- Only just war is a war of self-defense against aggression.
- Moral basis: state sovereignty must be protected.
Luban: State Sovereignty Not Primary

- Must distinguish between legitimate and illegitimate states.
- Only legitimate states possess right of sovereignty and non-interference.
- UN definition and concept of sovereignty ignore individual human rights.

Primacy of Human Rights

- All rights of states come from individual human rights. (Walzer says he agrees.)
- Social contract: formation of nation comes first (horizontal contract).
- The nation (people) may then, through consent, establish vertical contract with state.
- States have rights only if legitimate.

Nation Prior to State

<table>
<thead>
<tr>
<th>Horizontal contract</th>
<th>Vertical contract</th>
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<tbody>
<tr>
<td>Shared experience and common life over time establish a “people” or nation</td>
<td>States</td>
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Might States Come First?

- Luban assumes nation comes first
- What about nation-building?
- Lebanon, Iraq, other: state comes first?
- Still issue of small minorities

Aggression Not Always a Crime

- Luban: nation may possess rights but state does not
- **A state without consent of people has no right against aggression**
  - How can we know from outside whether state is legitimate?
  - Luban: sometimes it’s obvious that it’s not; e.g. Nicaragua under Somoza
  - Vietnam invaded Cambodia under Pol Pot: should US have approved invasion?

A New Definition Based on Human Rights

- Distinguish human rights and “socially basic human rights” (security and subsistence, rights needed to enjoy any other rights)
- If no socially basic rights involved, any war threatening human rights is unjust
- A war defending socially basic human rights is just even if it violates other human rights.
Example

- State A is an oppressive state violating socially basic human rights
- State B invades A to liberate people. By UN definition, this is unjust aggressive war.
- But for Luban, state A is illegitimate.
- State B is defending socially basic human rights.

Hard case 1: subsistence

- May a starving state invade another for food? YES (if other state not also starving and there is no alternative)
- NOT just to invade another to avoid “mere” impoverishment or a certain standard of living (e.g., invasion for oil)
- Question: what about catastrophic decline?

Hard case 2: Intervention in oppressive state

- Legitimate
- The evidence that a state is "oppressive enough" is that it will need to violate socially basic rights (security) to stay in power
- Such a state loses the right to defend its sovereignty.
- Aggressor state is actually fighting just war in defense of socially basic human rights