

Regime Change and Just War

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LAST YEAR MARKED the sixtieth anniversary of the end of the Second World War and the beginning of regime change and democratization in Germany. The allies confirmed their commitment to democratization at Potsdam in July of 1945, where the British provided an admirable example of what democracy means. Elections were held in the United Kingdom while the conference was going on; Winston Churchill, the great wartime leader of his country, was defeated—and immediately replaced at the meetings (Stalin must have been astonished) by Clement Atlee, the leader of the Labour Party. This was a classic democratic moment: the ability of the opposition to challenge and possibly defeat a powerful leader is surely the crucial test of a democratic constitution.

The political reconstruction of Germany was an effort, at least in the Western occupation zones, to enable the German people to enact moments like that. It is important to notice that what was planned was a restoration of democracy, not a creation *ex nihilo*—the Weimar republic lay only twelve years in the past, and old political parties like the Christian Democrats and the Social Democrats were quickly reconstituted. For that reason (and for others too) the German case isn't a good precedent, as is sometimes claimed, for what the United States has recently been trying to do in Iraq. Still, this was a restoration-by-force, the consequence of military victory and military occupation. And so it raises the question of when or whether forcible democratization can be justified. Or, in the language of contemporary debates, Is “regime change” a just cause for war?

In the case of Nazism, regime change was

the consequence, not the cause, of the war fought by the allies. It wasn't the aim of the wars declared in 1939 by Poland, France, and Britain to transform the German state. Rather, these were paradigmatic just wars; their cause was resistance to armed aggression. And according to the just-war paradigm, resistance to aggression stops with the military defeat of the aggressor. After that, presumably, there is a negotiated peace, and in the course of the negotiations, the victims of aggression and their allies may legitimately look for material reparations and political guarantees against any future attack, but regime change is not part of the paradigm. It is a feature of just-war theory in its classic formulations that aggression is regarded as the criminal policy of a government, not as the policy of a criminal government—let alone a criminal system of government. Individual leaders may be brought to trial after the war; the governmental system is not at issue. But if we understand aggression as an act that follows from the very character of the system—which is how we came to understand Nazi war-making—then regime change will seem a necessary feature of the postwar settlement.

Of course, it wasn't only the aggressive wars fought by the Nazi regime but also the genocidal policies it pursued that justified the demand first for unconditional surrender and then for political reconstruction. A negotiated peace with Hitler or his associates was not a morally imaginable outcome of the Second World War, as it might have been with the kaiser in the first, had his regime not been overthrown from within. The Nazis had to go, whether or not their German opponents were capable of seeing them out. There is a general argument here, which applies most clearly to cases of “humanitarian intervention.” When a government is engaged in the mass murder of its own people, or some subgroup of its own

people, then any foreign state or coalition of states that sends an army across the border to stop the killing is also going to have to replace the government or, at least, to begin the process of replacement. It isn't only aggressiveness, then, but also murderousness that makes a political regime a legitimate candidate for forcible transformation. Still, the primary cause of the intervention is to stop the killing; regime change follows from that purpose. An authoritarian regime that is capable of mass murder but not engaged in mass murder is not liable to military attack and political reconstruction.

Imagine that there had been, as there surely should have been, an African or a European or a United Nations intervention in Rwanda in 1994. The initial purpose of the military action would have been to stop the massacre of Tutsi men and women (and their Hutu sympathizers), but in order to do that and to protect the survivors, it would have been necessary to overthrow the Hutu Power regime. And whoever was responsible for that overthrow would also have taken on some degree of responsibility for the creation of an alternative government. It would have been wise to share that responsibility with local political forces and also with international agencies, but there would have been no just way of shedding it entirely.

And once the intervening forces are engaged in the work of political reconstruction, there are very good reasons why they should aim at democracy or, at least, open the way for the practice of democracy. The reasons have to do with the legitimacy of democratically based regimes, which are established through a literal (and ongoing) self-determination, and also with their relative benevolence. Genuine democracies have not engaged in the mass murder of their own citizens (even if their record abroad is less satisfactory). But what if there are other traditions of legitimacy in the invaded country—involving, for example, a dominant role for religious leaders? What if there is strong traditionalist opposition to the legal equality that democracy requires—most crucially (and commonly), opposition to the equality of women? I can imagine cases where democratization might have to be a gradual process or where democratic principles might have

to be compromised in one way or another. Even when a humanitarian crisis has rightly triggered intervention, we can still hope to minimize the coercive imposition of foreign ideas and ideologies. The intervening forces have a mandate for political, but not for cultural, transformation. In any case, it isn't easy to imagine how they might set about changing the customs and beliefs of the people they are (temporarily) ruling. Negotiation and compromise are almost certainly better than the coercion that would be necessary for a project like that.

Nonetheless, just wars and humanitarian interventions will often be an occasion for forcible and justifiable democratization—and that will sometimes require an attack on traditional hierarchies and customary practices. The exclusion of women from the political sphere is an obvious example. So consider the other case of post–World War II regime change: the American occupation of Japan. The constitution imposed by the occupation authorities provided that all laws governing gender relations “shall be enacted from the standpoint of individual dignity and the essential equality of the sexes.” Sixty years later, there is pressure from the right to repeal this article—in defense, it is claimed, of traditional Japanese values. But one might say that the very possibility of repeal vindicates the American imposition. The Japanese now have to argue about the structure of gender relations in their society, and they will get whatever structure a majority of them are prepared to support. Even imposed democracy is defensible in this sense: it is more open-ended than any other regime change would be.

SO WE HAVE what we might think of as the World War Two occasions for justified regime change, and we have the (unrealized) Rwandan occasion. Is there, was there, an Iraqi occasion?

Note that in the first Gulf War of 1991, the United States and its allies fought in strict accordance with the classic just-war paradigm: they stopped fighting once the invasion of Kuwait had been decisively defeated. They did not march on Baghdad; they did not aim at the overthrow and replacement of the Baathist regime; nor did they do anything to make it pos-

sible for the Iraqi people to turn Saddam Hussein out of office. On the contrary, having called for rebellions against Saddam's rule, they failed to come to the aid or, only a short time later, to the rescue, of the rebels. Though U.S. officials compared Saddam to Hitler, the allies did not act on the comparison; it was propaganda and nothing more. They did seek constraints on the future behavior of the Baathist regime, and these constraints were predicated on a fairly grim view of the regime. Still, what we might think of as the constitutional character of the Iraqi state—whether it was autocratic or democratic, secular or religious; whether it recognized or overrode human rights; whether its bureaucrats acted arbitrarily or were legally constrained—all this was judged irrelevant to the decisions about war and peace made by the American-led coalition.

By 2003 the position of the United States and its allies, a smaller number now, had changed dramatically. To be sure, the second Bush administration gave a variety of reasons for its decision to go to war: another day, another reason. But all the reasons suggested the need, this time, to march on Baghdad and replace the Baathist regime. The most important reason was the danger that Iraq possessed, or in the near future would be capable of producing, weapons of mass destruction. But the fact that France (say) possessed weapons of mass destruction was never imagined as an occasion for war. It was the character of its regime that made Iraq dangerous: the U.S. government claimed that Saddam's was an inherently aggressive and an inherently murderous regime. Just as it had committed aggression in the past, so it had massacred its own people in the past, and American leaders insisted that, in this case, the past was prologue. What had happened before would happen again unless the regime was replaced.

So Iraq was not similar to the German or Japanese or the (hypothetical) Rwandan case: the war was not a response to aggression or a humanitarian intervention. Its cause was not (as in 1991) an actual Iraqi attack on a neighboring state or even an imminent threat of attack; nor was it an actual, ongoing massacre. The cause was regime change, directly—which means that the U.S. government was arguing

for a significant expansion of the doctrine of *jus ad bellum*. The existence of an aggressive and murderous regime, it claimed, was a legitimate occasion for war, even if the regime was not actually engaged in aggression or mass murder. In more familiar terms, this was an argument for preventive war, but the reason for the preventive attack wasn't the standard perception of a dangerous shift in the balance of power that would soon leave "us" helpless against "them." It was a radically new perception of an evil regime.

No one who has experienced, or reflected on, the politics of the twentieth century can doubt that there are evil regimes. Nor can there be any doubt that we need to design a political/military response to such regimes that recognizes their true character. Even so, I do not believe that regime change, by itself, can be a just cause of war. When we act in the world, and especially when we act militarily, we must respond to "the evil that men do," which is best read as "the evil that they are doing," and not to the evil that they are capable of doing or have done in the past. Aggression and massacre are legitimate causes of war, and we must learn, what we have not yet learned, to respond to each of these in a timely and forceful way. But the existence of regimes capable of aggression and massacre requires a different response.

THE HARSH containment system imposed on Iraq after the first Gulf War was an experiment in responding differently. Containment had three elements: the first was an embargo intended to prevent the importation of arms (which also affected supplies of food and medicine, though it should have been possible to design a "smarter" set of sanctions). The second element was an inspection system organized by the UN to block the domestic development of weapons of mass destruction. The third element was the establishment of "no-fly" zones in the northern and southern parts of the country so that Iraq's air power could not be used against its own people. The containment system was, as we now know, highly effective. At least, it was effective in one sense: it prevented both weapons development and mass murder and so made the war of 2003

unnecessary. But in another sense it was a failure: it did not prevent the war.

The primary reason for the failure was, obviously, the ideologically driven policy of the Bush administration, which from the beginning favored regime change and war over containment. But there is another reason, less obvious, which needs to be stressed: the states that opposed the war on the grounds that containment was working were not themselves making it work. They were not participants in, or even supporters of, the containment system. The containment of Saddam's Iraq began as a multilateral enterprise, but in the end it was the Americans who were doing almost all the work. Had there been many states, or even just a few more states, enforcing the embargo, insisting on inspections, and flying planes over northern and southern Iraq, the unilateral abrogation of the containment system by the U.S. government would not have been possible (or, at least, it would not have been as easy as it was). Had containment been an international project, American power might also have been contained within it.

There is a simple lesson here about the meaning of collective security. If measures short of war are to work against evil or dangerous regimes, they have to be the common work of a group of nations. They require multilateral commitment. Collective security must be a collective project. It won't be successful if the costs of security are assigned to one state while all the others pursue business as usual. The state bearing the costs can't be counted on to bear them indefinitely. Adventurous politicians will be tempted by the idea of a quick and radical alternative to containment. And regime change is the obvious alternative.

I have described the elements of the containment system as "measures short of war." In fact, they all involved the use of force, which is why states eager for business as usual refused to participate. According to international law, embargoes (stopping ships on the high seas) and the enforcement of no-fly zones (bombing radar and anti-aircraft installations) are acts of war. But it is common sense to recognize that they are very different from actual warfare: compare Iraq before and after March 2003. And certainly containment is much

easier to justify than a full-scale attack would be. The standard arguments against preventive war don't apply, it seems to me, to the preventive use of force-short-of-war—since short-of-war means without war's unpredictable and often catastrophic consequences. Forceful containment can be justified by a reasonable perception of the dangers posed by a regime like Saddam Hussein's.

But containment doesn't or, in the Iraqi case, didn't, bring the regime down. So why is it preferable to, let's say, a short war that produces a new regime? That is a hard question, even after the war has turned out not to be short. But I believe that patience would have been a better policy in 2003. Because containment rendered Saddam's regime harmless, it did in fact weaken it, for regimes of this sort cannot endure being harmless. But the full realization of this effect was still a long way off; in the short run, the regime survived containment. Hence the most plausible argument for going to war might have been that the containment system was costly and carried risks of its own, that it could not be sustained indefinitely, and that a decision to fight might well win out on a straightforward utilitarian calculation. The argument fails, however, because the calculation would only go that way if we took an optimistic view of the probable costs of the war, and it seems to me that we are not allowed that kind of optimism. I mean, morally allowed, given the nature of the risks that we are imposing on other people.

SO, THE IRAQI case invites us to think about the use of force-short-of-war—the containment regime of 1991–2003, which the UN endorsed and the U.S. enforced, is only one possible example of this use. Despite the French argument at the UN in 2002 and 2003 that the use of force must always come as a last resort, force-short-of-war obviously comes before war itself. The argument about *jus ad bellum* needs to be extended, therefore, to *jus ad vim*. We urgently need a theory of just and unjust uses of force. This shouldn't be an overly tolerant or permissive theory, but it will certainly be more permissive than the theory of just and unjust war. The immediate question for us is whether the permissions reach to

regime change and democratization. As I have already suggested, this is closely connected to questions about prevention. Preventive war is not justifiable either in standard just-war theory or in international law, but what we might think of as “preventive force” can be justified when we are dealing with a brutal regime that has acted aggressively or murderously in the past and gives us reason to think that it might do so again. In such cases, we aim at containment but hope for regime change. And we can legitimately design the containment policy to advance this further purpose whenever that is possible—which means that we can use force, in limited ways, for the sake of producing a new (and if new then also democratic) regime.

I will come back to the necessary limits on this use of force; before doing that, however, I want to consider how it stands vis-à-vis the classic principle of nonintervention, which holds that the regime of a country should reflect the history, culture, and politics of that country, and not of any other. A regime of freedom, as John Stuart Mill argued, requires men and women who value freedom enough to risk their lives in its defense. But regime change short of war leaves plenty of room for local valuations and local risk-taking. It is so indirect that it doesn’t raise the questions I have already raised with regard to Japan in 1945. Consider, again, the no-fly zone in northern Iraq: this was certainly a kind of humanitarian intervention, in that it served to prevent a massacre of the Kurds, which there was good reason to expect after the massacre of Shi’ites in the south. That good reason, it seems to me, was sufficient to justify the preventive intervention. The no-fly zone also produced a kind of regime change, in that it allowed the creation of an autonomous Kurdistan. Can this also be justified? Kurdish autonomy was not a regime imposed from the outside; though the containment system made autonomy possible, the new regime was first demanded, and then created and sustained, by the Kurds themselves. It may happen that containment anticipates rather than responds to local demands for self-determination. But this isn’t an unjust anticipation, since the states organizing the containment don’t themselves overthrow the old regime, and they don’t establish the new one, if there is a new

one. They are operating at the edge of the non-intervention principle, but not in violation of it. If preventing aggression and mass murder is justified, then so is this indirect version of regime change.

BUT THERE ARE limits on the occasions when force-short-of-war can be used and also on the ways in which it can be used—limits that correspond to *jus ad bellum* and *jus in bello*. I have already discussed the occasions, which have to do with the threat of aggression or massacre. But what state or set of states is morally bound to recognize this threat and organize a containment system? Collective security depends on collective recognition. Right now, however, the capacity of international agencies and regional associations to respond to threats of aggression and massacre is probably even less developed than their capacity to respond to actual aggression and massacre. So we have to acknowledge the possible legitimacy of unilateral action in both cases. But unilateralism works less well in the first case than in the second. Force-short-of-war—especially when it involves trade sanctions or a weapons embargo—requires the co-operation of many nations if it is to be effective. I have said this already, but it bears repeating: the avoidance of war and massacre requires a committed collective, ready to use force. It is sadly true that Europe today does not display that commitment; nor do Europe and the U.S. together. And the U.S. alone has been more ready, these past several years, to go to war than to use force in restrained and politic ways.

When force-short-of-war is used, it should be limited in the same way that the conduct of war is limited, so as to shield civilians. This is especially important in the case of economic blockades, where the civilian population is inevitably at risk, even if the government and not the population is the target of the blockade. The policy that Colin Powell called “smart sanctions”—they are meant to be morally as well as politically smart—is supposed to reduce the risk; it should certainly be tried on the next legitimate occasion. There is no justification for a blockade that effectively deprives civilians of food and medicine. But what should

we do if a barbarous government deliberately increases the privation of its own civilians in order to discredit the blockade, as Saddam did in the 1990s? The UN responded with its oil-for-food program, and I suppose something might be learned from that effort, if only about how to do it better. Some such response is clearly necessary, even if the hunger and disease attributed to the blockade are in fact the work of the targeted government—further evidence that the targeting is justified.

FORCE-SHORT-OF-WAR doesn't permit forcible democratization. The German and Japanese examples are not relevant here, nor is Iraq as it is at this moment, with forcible democratization proceeding, not very effectively. I have defended an alternative way of proceeding, which was wrongly rejected in 2003 but will certainly come up again. Containment opens a different path to democracy, where the actual work of democratization must be done by local political agents, taking advantage of the international condemnation, ostracism, and constraint of the brutal regime. But this suggests one further step in the regime change argument. War can lead directly to political reconstruction; the use of force-short-of-war can do this only indirectly. But there is another form of direct action, which involves what we might call "politics short of force," noncoercive politics, the work of nongovernmental organizations, such as Human Rights Watch or Amnesty International, which also aim, in their own way, at regime change.

The most important work of groups like these is to foster the kind of civil society that

democracy requires—the associational world of interest groups, labor unions, professional societies, social movements, and political parties. By opposing repression and censorship, they open space for organizations independent of the state, and their people on the ground train local men and women in the organizational skills that enable political action. These organizations, and these men and women, are at least potential contributors to a democratic political process. In the case of really brutal and dangerous governments, however, their actual contribution may wait upon a more coercive political intervention. Politics-short-of-force may depend on force-short-of-war. In fact, we have to sponsor and support this interaction—because these two together can help us avoid war itself.

Allied policy at the end of the Second World War reminds us that regime change can be justified in the aftermath of a just war. I have argued that a more indirect approach to regime change can also be justified before (and instead of) a just war—indeed, the success of this approach would render war unnecessary and therefore unjust. And if we commit ourselves to that indirection, if we commit ourselves to the forceful containment of brutal regimes, to collective security, we may find that we can reach justice without the terrible destructiveness of war. ●

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