

## Interpreting the Fall of a Monument

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On April 9<sup>th</sup>, the entire world watched as American troops threw a noose round the neck of the dictator and, surrounded by jubilant throngs of Iraqis, pulled him off his pedestal. The apparently unshakeable monument tottered, and then finally fell. But before it crashed satisfyingly to the ground, there was a momentary pause before the force of gravity could overcome the statue's grotesquely unnatural, horizontal posture. Bobbing gently up and down, the massive figure clung, for one last moment, to its horror.

Just as an optical illusion, looked at long enough, will "flip" into a new form, so the public perception of the war in Iraq seemed to perform an about-face at this one scene. The morally obscene – the "shock and awe" inflicted on a helpless and mercilessly bombed population – morphed into the image of joyful citizens freed from terror and oppression in the Shiite district of Baghdad. Both images contain an element of truth, even as they evoke contradictory moral feelings and attitudes. Must ambivalent feelings lead to contradictory judgments?

The matter is simple enough at first glance. A war in violation of international law remains illegal, even if it leads to normatively desirable outcomes. But is this the whole story? Bad consequences can discredit good intentions. Can't good consequences generate their own justifying force after the fact? The mass graves, the underground dungeons, and the testimony of the tortured all leave no doubt about the criminal nature of the regime. The liberation of a brutalized population from a barbaric regime is a great good; among political goods it is the greatest of all. In this regard, the Iraqis themselves, whether they are currently celebrating, looting, demonstrating against their occupiers, or simply apathetic, contribute to the judgment

on the moral nature of the war. But for us in Germany, two reactions stand out in the political public sphere.

On one side, pragmatic minds affirm the normative force of the factual. They rely on the powers of practical judgment and a healthy sense of the political limits of morality, which let them appreciate the consequences of victory. In their eyes, drawn-out arguments over the justification for war are simply *fruitless*. The war is now a historical fact. Others simply *capitulate* to the force of the factual, whether from conviction or opportunism. They brush aside what they now see as the dogmatism of international law, reasoning that just this dogmatism, held captive by a sort of post-heroic squeamishness over the risks and costs of military force, has become blind to the true value of political freedom.

Both of these responses are inadequate. They both succumb to an emotional response to the supposed abstractions of a “bloodless moralism” without having grasped just what the neo-conservatives in Washington have actually offered up as their alternative to the domestication of state power through international law. Their alternative is neither political realism nor the pathos of freedom. Instead the neo-conservatives make a revolutionary claim: if the regime of international law fails, then the hegemonic imposition of a global liberal order is justified, even by means that are hostile to international law.

Wolfowitz is not Kissinger. He is a revolutionary, not a cynical technician of political power. To be sure, the American superpower reserves the right to take unilateral action, preemptive if necessary, and to employ all available military means to secure its hegemonic status against all possible rivals. But global power is not an end in itself for the new ideologues. What distinguishes the neo-conservatives from the “realist” school of international relations is the vision of an American global political order that has definitively broken with the reformist program of UN human rights policies. While not betraying liberal goals, this vision is shattering the civil limits that the UN Charter – with good reason – had placed on their realization.

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At present, the United Nations is certainly not yet in any position to compel a non-compliant member state to guarantee democracy and the rule of law to its own citizens. And the highly selective enforcement of the UN’s human rights policy is itself the product of political realities: equipped with veto power, Russia need not fear any armed intervention in Chechnya. Saddam Hussein’s use of nerve gas

against his own Kurdish population is only one of many chapters in the disgraceful chronicle of failures of a world organization that has averted its gaze even from genocide. In the aftermath of the Second World War, the core mission of the UN – enforcing the prohibition against wars of aggression – eliminated the *jus ad bellum* and placed the sovereignty of individual states under new limits, thus taking a first decisive step on the path toward a cosmopolitan legal order. That core mission is now more crucial than ever before.

For half a century the United States could count as the pacemaker for progress on this cosmopolitan path. With the war in Iraq, it has not only abandoned this role; it has also given up its role as guarantor of international rights. And its violation of international law sets a disastrous precedent for the superpowers of the future. Let us have no illusions: the normative authority of the United States of America lies in ruins. Neither of the two conditions for a legally permissible use of military force were fulfilled: the war was neither a case of self-defense against an actual attack or the immediate threat of one, nor was it authorized by a decision of the Security Council according to Chapter VII of the UN Charter. Neither Resolution 1441 nor any of the 17 previous (and “spent”) resolutions on Iraq can count as a sufficient authorization. The “coalition of the willing” confirmed this failure performatively as it initially sought a “second” resolution, but in the end refused to bring the motion to a vote because it could not even count on the “moral” majority of the Security Council not to veto. The whole procedure turned to farce as the President of the United States repeatedly declared his intention of acting without the mandate of the UN if necessary. From the very beginning the Bush Doctrine made it impossible to understand the military deployment in the Gulf region as a mere threat, for this would presuppose that somehow the threatened sanctions could have been averted.

Nor does a comparison with the intervention in Kosovo offer an excuse. Of course, in the case of Kosovo too, there was no authorization by the Security Council. But three circumstances of the intervention there offered legitimation after the fact: First, the intervention aimed at the prevention of ethnic cleansing, which was known at the time of the intervention to be taking place. Second, it was tasked with fulfilling the provision of international law for emergency aid, addressed to all nations. And finally, we can refer to the undisputed democratic and rule-of-law-character of all the members of the acting military coalition. Today, normative dissent has divided the West itself.

Already at that time, in April of 1999, a remarkable difference had become visible between the continental European and the Anglo-American powers over strategies for justifying military action. The Europeans had drawn the lesson from the disaster at Srebrenica: they understood armed intervention as a way of closing the gap be-

tween efficiency and legitimacy that had been opened by earlier peacekeeping operations, and thus saw it as a means for making progress toward fully institutionalized civil rights. England and America, conversely, satisfied themselves with the normative goal of promulgating their own liberal order internationally, through violence if necessary. At the time of the intervention in Kosovo, I had attributed this difference to contrasting traditions of legal thought – Kant’s cosmopolitanism on the one side, John Stuart Mill’s liberal nationalism on the other. But in light of the hegemonic unilateralism that the leading thinkers of the Bush Doctrine have pursued since 1991 (see the documentation by Stefan Frölich in the FAZ from April 10<sup>th</sup>, 2003), one suspects in hindsight that the American delegation had already led the negotiations at Rambouillet from just this peculiar viewpoint. Be that as it may, George W. Bush’s decision to consult the Security Council certainly didn’t arise from any wish for legitimation through international law, which had long since been regarded, at least internally, as superfluous. Rather, this rear-guard action was desired only insofar as it broadened the basis for a “coalition of the willing,” and soothed a worried population.

All this notwithstanding, we should not interpret the neo-conservative doctrine as the expression of a normative cynicism. Geo-strategic objectives such as securing spheres of influence or access to essential resources, which the doctrine must also meet, may well invite analysis in terms of a critique of ideology. But such conventional explanations trivialize what, until 18 months ago, was still an unimaginable break with norms that the United States had been committed to. We would do well, in other words, not to guess at motives, but to take the doctrine at its word. For otherwise we fail to recognize the truly revolutionary character of a political re-orientation; a transformation that finds its sources in the historical experiences of the previous century.

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Hobsbawm rightly named the 20<sup>th</sup> century the “American century.” Neo-conservatives can see themselves as ‘victors’ and can take undisputed successes – the re-ordering of Europe and the Pacific after the surrender of Germany and Japan, as well as the reformulation of Eastern and Central Europe after the collapse of the Soviet Union – as the model for a new world order, all carried out under the leadership of the United States. From the liberal perspective of a *post-histoire*, à la Fukuyama, this model has the advantage of making laborious and awkward discussions of normative goals pointless: what could possibly be better for people than the worldwide spread of liberal states and the globalization of free markets? Moreover, the road there is clearly marked: Germany, Japan, and Russia were forced to their

knees by war and the arms race. In today's era of asymmetric warfare, military might is now more attractive than ever, since the victor is determined *a priori* and can purchase victory with relatively few victims. Wars that make the world better need no *further* justification. From this point of view, at the minor cost of some collateral damage, they remove undisputed evils that would survive under the aegis of a powerless community of nations. Saddam pulled from his pedestal *is* a sufficient argument for justification.

This doctrine was developed long before the terror attack on the twin towers. The cleverly manipulated mass psychology of the all-too understandable shock of September 11<sup>th</sup> certainly helped to create the initial climate in which the new doctrine could find widespread support – now in a rather different, more potent version, intensified by the addition of a “war against terrorism.” This intensification of the Bush Doctrine depends on defining an essentially new phenomenon in the terms of conventional warfare. In the case of the Taliban regime, there was a causal connection between an elusive terrorism and a “rogue state” – an enemy that could be attacked and seized. This provided a model for understanding interstate warfare as a weapon against an insidious threat emerging from highly diffuse and globalized networks.

As opposed to the doctrine's original version, this connection between hegemonic unilateralism and doing battle against a creeping threat introduces the argument for self-defense. But this also imposes new burdens of proof. The American government had to try to convince a global public sphere of contacts between Saddam Hussein and Al Qaeda. At least at home, the disinformation campaign was so successful that according to the most recent polls, 60 % of Americans welcomed the defeat of Saddam as “payback” for the terror attacks of September 11<sup>th</sup>. Apart from the difficulty of the lack of evidence, Bush Doctrine doesn't even offer a plausible explanation for the *preventive* use of military force. The violence of the new kind of global terrorism – “war in peacetime” – escapes the categories of state warfare. It cannot justify the necessity of revising and loosening the strict clause that regulates states' self-defense in international law, and by no means in favor of permitting an anticipated *military* self-defense.

In the face of enemies who are globally networked, decentralized, and invisible, the only effective kinds of prevention will be on *other* operative levels. Neither bombs nor rockets, neither fighter jets nor tanks will be of any help. What *will* help is the international networking of flows of information among intelligence services and prosecutorial authorities, the control of flows of money, and the rooting out of logistical supplies. The corresponding “security programs” in pursuit of these goals are relevant for civil rights within a state, not international law. Other dangers which arise from failures of negligence in non-proliferation policies (concerning

nuclear, chemical, and biological weapons) are at any rate better handled through stubborn negotiation and inspection than with wars of disarmament, as the subdued reaction to North Korea illustrates.

The addition of a war on terrorism to the original doctrine therefore offers no new legitimacy for the pursuit of a hegemonic world order. Saddam pulled from his pedestal remains the argument: a symbol for a new liberal order for an entire region. The war in Iraq is a link in the chain bringing about new world order, justifying itself with the claim that it replaces the futile human rights politics of an exhausted world organization. What's speaking against it? Moral feelings lead us astray because they attach to individual scenes and particular images. There is no way to avoid the question of how to justify the war as a whole. The crucial issue of dissent is whether justification through international law can, and should, be replaced by the unilateral, world-ordering politics of a self-appointed hegemon.

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*Empirical* objections to the possibility of realizing the American vision converge in the thesis that global society has become far too complex; the world is no longer accessible to a centralized control, through politics backed up by military power. In the technologically supreme and heavily armed superpower's fear of terrorism, one can sense a "Cartesian anxiety" – the fear of a subject trying to objectify both itself and the world around it; trying to bring everything under control. Politics loses its primacy over the horizontally networked media of both markets and of communication once it attempts to regress to the original, Hobbesian form of a hierarchical security system. A state that sees all its options reduced to the stupid alternatives of war or peace quickly runs up against the limits of its own organizational capacities and resources. It also steers the process of political and cultural negotiation down a false track, and drives the costs of coordination to dizzying heights.

But even if the design for a politics of hegemonic unilateralism could be implemented, it would generate side-effects that are undesirable according to its own normative criteria. The more that political power (understood in its role as a global civilizing force) is exercised in the dimensions of the military, secret security services and the police, the more it comes into conflict with its own purposes, endangering the mission of improving the world according to the liberal vision. In the United States itself, the administration of a perpetual "wartime president" is already undermining the foundations of the rule of law. Quite apart from methods of torture that are practiced or tolerated outside the nation's borders, the wartime regime has not only robbed the prisoners in Guantanamo of the rights they are

entitled to according to the Geneva Convention; it has expanded the powers of law enforcement and security officials to the point of infringing the constitutional rights of America's own citizens. And wouldn't the Bush Doctrine demand normatively counter-productive measures in the (not improbable) scenario that the citizens of Iraq, Syria, Jordan, Kuwait, etc. made a less than friendly use of the very democratic freedoms that the American government wants to give them? The Americans liberated Kuwait in 1991; they didn't democratize it.

Above all, however, the American superpower's self-proclaimed role of trustee runs up against the objections of its own allies, who remain unconvinced *on good normative grounds* of its paternalistic claim to unilateral leadership. There was a time when liberal nationalism saw itself justified in promulgating the universal values of its own liberal order, with military force if necessary, throughout the entire world. This arrogance doesn't become any more tolerable when it is transferred from nation-states to a single hegemonic state. It is precisely the universalistic core of democracy and human rights that forbids their unilateral realization at gunpoint. The universal validity claim that commits the West to its "basic political values", that is, to the procedure of democratic self-determination and the vocabulary of human rights, must be confused with the imperialist claim that the political form of life and the culture of a particular democracy – even the oldest one – is exemplary for all societies.

The "universalism" of the old empires was of this sort, perceiving the world beyond the distant horizon of its borders only from the centralizing perspective of its own worldview. Modern self-understanding, by contrast, has been shaped by an egalitarian universalism that requires a decentralization of one's own perspective. It demands that one relativize one's own views to the interpretive perspectives of equally situated and equally entitled others. It was precisely the insight of American pragmatism that reciprocal perspective-taking paves the way for grasping what is in each case equally good for all parties. The "reason" of modern rational law does not consist of universal "values" that one can own like goods, and distribute and export throughout the world. "Values" – including those that have a chance of winning global recognition – don't come from thin air. They win their binding force only within normative orders and practices of particular forms of cultural life. If thousands of Shiites in Nasiriya demonstrate in equal measure against both Saddam and the American occupation, they express the truth that non-Western cultures must appropriate the universalistic content of human rights from their own resources and in their own interpretation, one that will construct a convincing connection to local experiences and interests.

And this is why multilateral will-formation in interstate relations is not simply one option among others. From its self-chosen isolation, even the good hegemon, hav-

ing appointed itself the trustee of general interests, cannot *know* whether what it maintains is in the interest of others to do is, in fact, *equally* good for all. There is no sensible alternative to the ongoing development of international law into a cosmopolitan order that offers an equal and reciprocal hearing for the voices of all those affected. The world organization of the United Nations has so far not suffered truly significant damage. Insofar as the “small” member states on the Security Council refused to buckle under pressure from the larger states, it has even gained in regard and influence. The reputation of the world organization can suffer only self-inflicted damage: if it were to try, through compromises, to “heal” what cannot be healed.