

ISSA Proceedings 1998 - Duties Beyond Borders? Appeals To Moral Necessity In Statecraft



Speaking at the dedication of the U.S. Holocaust Memorial Museum a few years ago, Nobel Laureate Elie Wiesel called for the Clinton Administration to take action to stop the carnage in Bosnia. "Something, anything, must be done," he implored (*Time*, May 3, 1993: 48). Shocked by atrocities, the horror of systematic rape, and waves of

panic-stricken refugees fleeing in the wake of "ethnic cleansing," many other people joined Wiesel in urging the nations of the world to intervene for humanitarian reasons. "All humanity should be outraged," asserted Thomas Buergenthal, former president of the Inter-American Court of Human Rights and a survivor of Auschwitz (cited in Lillich 1993: 574). "We cannot just let things go on like this," insisted former British Prime Minister Margaret Thatcher. "It is evil" (*Time*, April 26, 1993: 35).

Whether prompted by genocide in the former Yugoslavia or political mass murder in such places as Cambodia or Rwanda, the issue of what should be done about human rights violations in other countries highlights an old debate over whether ethical considerations ought to influence foreign policy. Do political leaders have a moral obligation to alleviate human suffering no matter where it is located? Must they protect foreign nationals even at the expense of their countrymen? If so, should it be done through a quick rescue operation? Or should it include an effort to eradicate the underlying cause of the suffering? These questions have received renewed attention with the establishment of a United Nations' War Crimes Tribunal in The Hague, charged with conducting the first international war crimes trials since those undertaken in Nuremberg and Tokyo at the end of Second World War.

The purpose of this essay is to analyze appeals to moral necessity in persuasive dialogue on foreign policy issues. I begin by differentiating between two types of appeal: one based on duty; the other, on right. After comparing the deontological assumptions of duty-based appeals with the consequentialism of rights-based appeals, I discuss how metaphors are sometimes used in the latter to conflate

legal right with moral obligation. Next, using a series of speeches that attempted to justify the 1989 intervention by the United States into Panama, I illustrate the rhetorical strategy employed by statesmen who mask legal permissibility as moral obligation. Finally, I conclude with a discussion of the problems inherent in moral appeals that blur the distinction between the permissible and the obligatory.

1. Arguments From Moral Necessity

Throughout the ages, political leaders have justified the use of military force against neighboring states with a form of argument that stresses how foreign policy is driven by unavoidable necessities. In general, these necessities are portrayed in strategic terms; they are actions that supposedly must be carried out to advance national security interests regardless of whether they contravene prevailing ethical standards (Raymond 1995).

Recently a different conception of necessity has entered into debates about the use of military force. Rather than defending the resort to arms on the grounds of strategic necessity, it is often justified nowadays as a “categorical moral imperative” to stop a brutal government from violating the human rights of its citizens (Reisman 1973: 168; Schermers 1991: 592; Rodley 1992: 35). As one advocate of this view has put it, the military defeat of rulers who initiate massacres “is morally necessary” (Walzer 1977: 105). It is an absolute duty, one that holds at all times and in all places, and regardless of whether it advances the strategic interests of the intervening state.

Allowing the use of coercion by one state to modify the authority structure in another state would significantly transformation world affairs. Ever since the Peace of Westphalia ended the Thirty Years’ War in 1648, the twin principles of sovereignty and nonintervention have underpinned international relations. The only widely accepted exception to the prohibition against interfering in the domestic affairs of other nation-states is military intervention to liberate one’s own nationals when they are being held hostage, such as the 1976 Israeli mission to rescue its citizens from a hijacked airplane in Entebbe, Uganda. What is noteworthy about recent appeals to moral necessity is they do not focus on whether those who are suffering are the intervening state’s own citizens. Sovereignty, according to those who hold this view, is no longer sacrosanct (Scheffer 1996: 37). As self-proclaimed global citizens in an interdependent world, they do not recognize human rights issues as being a purely domestic matter. An example of this attitude can be seen in a letter written to the editor of

the *New York Times* (October 4, 1968, p. 46) by Arthur Leff, a professor at Yale Law School. Reacting to wrenching scenes of malnutrition during the Nigerian Civil War he demanded: "Forget all the blather about international law, sovereignty and self-determination, all that abstract garbage," he demanded. "Babies [in Biafra] are starving to death." As expressed in Article 7 of the Universal Declaration of Human Responsibilities, proposed by the InterAction Council of twenty-four former heads of state from five different continents, "Every person is infinitely precious and must be protected unconditionally."

2. Duty-Based Versus Rights-Based Appeals to Moral Necessity in Foreign Policy

In contrast to appeals to moral necessity that are grounded in deontological assumptions about categorical duty, a second type of appeal stresses the bad consequences that occur when legal rights are not observed (Eisner 1993: 224-225; Neff 1993: 185; Plant 1993: 110). The warrant licensing the claim that it is permissible to intervene with armed force in order to stop egregious violations of human rights rests on the backing of four propositions. The first proposition asserts that human rights are an international entitlement (D'Amato 1995: 148). Article 55(c) of the United Nations Charter requires member states to promote "universal respect for, and observance of, human rights" Over the past fifty years, the UN has developed a detailed list of inherent, inalienable rights of all human beings. The most significant legal formulation of these rights is in the so-called International Bill of Human Rights, the informal name given to The Universal Declaration of Human Rights (which was passed by a vote of the UN General Assembly in 1948), the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social, and Cultural Rights (which were both opened for signature in 1966 and entered into force a decade later). The legal rules governing these rights are regarded as *jus cogens* – peremptory norms from which no derogation is permitted.

The second proposition maintains that governments committing grave violations of human rights forfeit their legitimacy. Although Article 2 (7) of the UN Charter prevents member states from interfering in the "domestic matters" of one another, the Charter's legal protection does not extend to genocide, torture, and other horrific acts shocking to the human conscience. Governments involved in egregious human rights abuses betray the most basic obligations they have to their citizens. By not providing citizens with security they fail recognized standards of civilization and lose their political legitimacy. The domestic jurisdiction of illegitimate governments is not protected by international law

(Tesón 1988: 15; Ellerman 1993: 348). Efforts by foreign states to defend the innocent against the actions of illegitimate governments is legally permissible (Luban 1980: 164).

The third proposition declares that the international community has a legal responsibility to stop serious human rights violations. According to the International Court of Justice, there are some obligations that a state has “towards the international community as a whole” and all members of that community “have a legal interest in their protection” (*Case Concerning the Barcelona Traction, Light and Power Company, Ltd.* [Belgium v. Spain], I.C.J. Reports, 1970, para. 33). Advocates of humanitarian intervention maintain that the entitlement for protection against genocide, slavery, and the like give rise to legal obligations *erga omnes*. Any member of the international community has legal standing to call for a state to observe these obligations and to impose sanctions if wrongful acts continue. As the publicist Emeriche de Vattel put it, “any foreign power may rightfully give assistance to an oppressed people who asked for aid” (cited in Schweigman 1993: 95).

Finally, the fourth proposition submits that punitive sanctions by members of the international community against illegitimate governments are legally permissible if they meet certain performance criteria. Among the criteria typically mentioned are:

1. a serious violation of human rights;
2. the lack of any other alternative to stopping the violation;
3. international endorsement of the military intervention;
4. multilateral conduct of the intervention;
5. use of the minimum level of force needed to stop the violation; and
6. a limited duration for the intervention (Benjamin 1992-1993).

3. The Use of Metaphors in Rights-Based Appeals

What is problematic about rights-based appeals is statecraft the shift from the assertion that certain actions are legally permissible to the contention that they are morally obligatory. To make this shift the rhetor relies upon metaphorical reasoning. Although metaphors often are thought of as poetic devices used to enliven dull prose, they also shape the way we conceive of complex phenomena. “The essence of a metaphor is understanding and experiencing one kind of thing in terms of another” (Lakoff & Johnson 1980: 5). Unlike analogies which compare things from the same domain of experience (e.g., “A war with Iraq will result in

another Vietnam”), Vosniadou & Ortony (1989: 7) point out that metaphors involve “across-domain” rather than “within-domain” comparisons (e.g., “War is like a disease”). By crossing categorical boundaries when depicting the unfamiliar (Kittay 1987: 19), metaphors highlight certain aspects of a phenomenon under investigation while concealing or misrepresenting other aspects.

The shift from a legal right to an inescapable moral duty to intervene against abhorrent acts of violence is attempted by using various hydraulic and organic metaphors. Like a raging flood or a wild fire, international humanitarian norms are said to be spreading across the political landscape, overwhelming everything in their path. National leaders have no choice but to accommodate these powerful forces which make the triumph of human rights a “*genuine historical inevitability*” (Brzezinski 1996: 166, emphasis in original).

Metaphors provide cognitive shortcuts that allow one to go beyond the information that is given (Shimko 1994: 662). As a rhetorical strategy, rights-based appeals to moral necessity begin by establishing that the horrible consequences of not stopping human rights abuses makes military intervention legally permissible. By playing upon metaphors of inescapable physical forces, the argument then shifts from the permissible to the obligatory. Intervention is required, not because of a categorical duty derived from features of the act that make it right independent of its consequences, but due to the need for national leaders to get in step the inexorable march of moral history.

To illustrate the problematic nature of this type of appeal to moral necessity, let us turn to the case of the 1989 United States intervention into Panama.

4. The Rhetorical Strategy of Rights-Based Appeals

At 1:00 A.M. on December 20, 1989, 22,000 U.S. troops supported by F-117A stealth attack aircraft invaded Panama in what President George Bush called Operation Just Cause. The purpose of the operation was to capture General Manuel Antonio Noriega, a military dictator who had gained control over Panama six years earlier. During his time in power, Noriega repressed opposition movements, manipulated elections, and ordered the murder of dissident political leaders. His ruthless behavior was overlooked by political leaders in the United States because he had worked for the Central Intelligence Agency and assisted Washington in its fight against communism in Central America. Between 1986 and 1987, however, Noriega’s human rights abuses and his involvement in narcotics trafficking and money laundering with the Colombian Medellín drug cartel were brought to light by a series of Congressional inquiries, reports

published in the *New York Times*, and independent criminal investigations presented to grand juries in Miami and Tampa, Florida. On April 8, 1988, President Ronald Reagan issued Executive Order No. 12635, which imposed economic sanctions on Panama because Noriega's actions now were seen as an "extraordinary threat to the nation security, foreign policy, and economy of the United States."

Although the sanctions damaged the Panamanian economy, they did not weaken Noriega's grip on political power. As a result, Reagan's successor, George Bush, began providing covert support for Noriega's political opponents. But the support was equally ineffective. Neither the May 1989 elections in Panama nor an attempted coup five months later ended the dictatorship.

On Friday, December 15, Noriega announced that henceforth he would serve as Panama's "maximum leader" with enhanced power to crush domestic dissent. The next day, following the murder of an unarmed U.S. marine lieutenant by members of the Panama Defense Forces, the wounding of another American serviceman, and arrest and brutal interrogation of a U.S. naval officer and his wife, Bush decided to invade. When justifying his decision in an address to the nation on December 20, Bush asserted that "General Noriega's reckless threats and attacks on Americans in Panama created an imminent danger to the 35,000 American citizens in Panama." As president of the United States, he continued, "I have no higher obligation than to safeguard the lives of American citizens." While Bush's address to the American public was couched in the traditional language of protecting citizens abroad, speeches delivered by Ambassador Thomas R. Pickering to the United Nations Security Council on December 20, 1989 and by Luigi R. Einaudi to the Organization of American States (OAS) on December 22, 1989 extended the justification to include the moral necessity of protecting foreign nationals.^[i]

Following the line of reasoning voiced by the president, Pickering began his speech by citing the "inherent right of self-defense under international law . . . in response to armed attacks by forces under the direction of Manuel Noriega." But after underscoring the importance of safeguarding American lives, he introduced another rationale for the intervention: Noriega and his "ruthless cabal repeatedly obstructed the will of the Panamanian people." Panamanians, he insisted, "have a right to be free." Referring to Noriega and his minions as "thugs" and "monsters," Pickering noted that the "whole world" has "denounced the violation of human rights" in Panama. For the United States, the issue was not merely guarding

national security interests; the “sovereign will of the Panamanian people is what we are here defending.” Pointing to a series of conditions that made the intervention legally permissible, he concluded by stressing that the invasion occurred “only after exhausting the full range of available alternatives.” Moreover, it was undertaken “in a manner designed to minimize casualties and damage,” and designed with the goal of withdrawing “as quickly as possible.”

With the intervention framed by Pickering in terms of a legally permissible response by the United States to a moral outrage, Ambassador Einaudi proceeded to explain why Washington faced a moral necessity that obliged it to act. He began his explanation by suggesting that “There are times in the life of men and of nations when history seems to take charge of events as to sweep all obstacles from its chosen path.” At such times, he continued, “history appears to incarnate some great and irresistible principle.” The world community was “once again living in historic times, a time when a great principle . . . [was] spreading across the world like wild fire.” The principle articulated “the revolutionary idea that the people, not governments, are sovereign.” Drawing a parallel to the fall of Erich Honecker in the German Democratic Republic, Gustav Husak in Czechoslovakia, and Todor Zhivkov in Bulgaria, he claimed it is a principle that has “acquired the force of historical necessity.” If the OAS invoked the nonintervention rule in the case of Noriega, it would “find itself cast on the side of the dictators and the tyrants of this world,” oppressors “en route to extinction.”

Would this organization, he asked, be willing to forfeit the “moral authority which it enjoys throughout this hemisphere by challenging the just verdict that history had decreed upon Manuel Noriega?” Expressing the maxim that the only language that dictators understand is force, he asserted “You cannot reason with a dictator, and you cannot, alas, ask him to relinquish peacefully that which he has obtained through bloody and unspeakable means.”

The “United States was forced to a path not of our choosing, but a path dictated by our national rights and responsibilities.” Our action has been “welcomed overwhelmingly by the people of Panama,” who along with others in the Western Hemisphere were “sick of stolen elections, sick of military dictatorships, sick of narco-strongmen, and sick of the likes of Manuel Noriega.” By supporting the United States, Einaudi proclaimed the OAS would “put itself on the right side of history.”

5. Conclusion

Throughout the history of the modern state system, appeals to moral necessity have been used by many political leaders to justify military interventions. Great Britain, France, and Russia employed such appeals at various times during the nineteenth century. More recently, they were used by India when intervening in East Pakistan (1971), by Vietnam when moving against the Khmer Rouge (1978), and by Tanzania when removing Idi Amin from Uganda (1979). Moral appeals can be an effective tactic in foreign policy argumentation, swinging the weight of presumption in favor of military intervention. Of the various factors that influence the strength of an argument, many are concerned with emotions and highly-placed values. Not only do they evoke a visceral reaction in the hearer, they address the hearer's desire for certainty by being structurally simple and unambiguous (Sillince & Minors 1991).

As the U.S. intervention into Panama in 1989 suggests, appeals to moral necessity can also mask foreign policies driven by considerations of expediency rather than by a genuine sense of moral duty. Whereas Bush explained the intervention to his domestic constituency in the traditional vocabulary of power politics, Pickering and Einaudi defended it to external audiences in moral terms. Pickering presented the course of action as legally permissible given the human rights violations committed by Noriega. Einaudi then described it as necessitated given the relentless march of humanitarian law over the centuries. What began as a plea to the UN Security Council regarding the legality of the intervention evolved before the Organization of American States into a moral imperative.

In retrospect, the moral necessity conjured up by the Bush administration was an instrumental means for promoting realpolitik ends. The welfare of Panamanians under Noriega was not a motive for intervention independent of the effect that the intervention was thought to have in advancing U.S. security interests. The use of legal rights-based appeals to moral necessity in this case illuminates a larger issue in contemporary international relations. With the end of the Cold War, numerous calls have been issued for members of the international community to intercede where outrageous conduct shocks the conscience of humankind. But not everyone who heeds these calls will do so for noble motives. Some states will use the mask of moral necessity to hide egoistic security interests. While there may be a legal right to intervene in cases of egregious human rights violations, international law does not spell out a duty to intervene. Although the use of force may be permissible, it is also permissible to forego the use of force. Indeed, there may be times when it is morally right to forego military intervention even when it is legally permissible. As Molière reminds us, we are responsible not only for our

actions, but also our inactions.

NOTES

i. All quotations from President Bush are from the Weekly Compilation of Presidential Documents, December 25, 1989. All quotations from Ambassadors Pickering and Einaudi are from Panama: A Just Cause. United States Department of State, Bureau of Public Affairs, Current Policy No. 120.

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