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INTERNATIONAL ETHICS FOR A NEW ERA: THE PROBLEM OF THE KIND WORLD POLICEMAN

LEA BRILMAYER, *AMERICAN HEGEMONY: POLITICAL MORALITY IN A ONE-SUPERPOWER WORLD*. New Haven: Yale University Press, 1994. xii + 263 pp.

*Reviewed by Fernando R. Tesón**

To many people, domination of one nation by another is a bad thing, and domination of many nations by one nation is even worse. Such domination or hegemony has been derisively called imperialism or neocolonialism, especially in developing countries. In legal circles, hegemony has been repeatedly denounced as disrespectful of state sovereignty and self-determination. States are equal sovereigns, we are told, and hegemony is a cruel and cynical way of thwarting in fact all the sovereign prerogatives that weaker nations have in law. Is this view sound, though? Intuitively we believe that some power inequalities are morally wrong, but that not all are. For example, for most people a democratically elected government that respects human rights is not objectionable, notwithstanding the fact that it wields considerable power over its citizens. In contrast, a dictator wields power unjustly. Are international relations different? Is it the case that in international relations *all* power differentials are objectionable? If so, why? Or should we instead say that in international relations, too, there are legitimate and illegitimate power structures? What is wrong with the "hegemony of freedom"?

Lea Brilmayer does not think that international relations are relevantly different in this regard, and she is, in my view, essentially right. In *American Hegemony* she defends the view that international power inequalities, and more specifically American hegemony after the Cold War, ought to be judged, like all inequalities, with the tools of political morality. She concludes that American hegemony can sometimes be justified, subject of course to important reservations, such as the requirement that hegemonic power be exercised to serve substantive liberal aims. Brilmayer scores important points in a number of running scholarly battles, the most important of which is the debate between

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realists and idealists. Her effort to devise a liberal theory of hegemony is commendable and, I believe, generally correct. The overall result is an original, creative, and convincing book. I will examine the various steps in her argument and offer some critical remarks.

I. THE REJECTION OF REALISM

In the first and best part of the book, Brilmayer delivers a powerful blow to the school of thought called "realism." An important realist tenet is that morality is useless in international relations because, unlike individuals, nations inhabit a state of anarchy. The arguments that Brilmayer marshals against the realists' dismissal of morality in international relations are original and powerful. She addresses the two main realist arguments against international morality: the structural and the jurisprudential. The structural argument is the well-known Hobbesian security dilemma: nations cannot afford to be moral because other nations will take advantage of their naive idealism. To begin, Brilmayer counters the realists' various criteria that define anarchy. To the claim that anarchy is the result of mere diffusion of political power, she rightly points out that this is incompatible with the existence of hegemony, which is precisely what she wants to discuss. To the claim that anarchy exists when there is no formal international government, she replies that such characterization is inconsistent with realism's own insistence on describing true power relations as opposed to idealizing equality. It should be important for realists that *there is* a hegemon, so the fact that there is no formal government cannot count against the use of international moral norms. As Brilmayer points out, if formalization is called for, we might more plausibly choose to characterize the United States as a "world leader" rather than deny the facts by insisting on abstract equality.

The final realist claim is that anarchy is defined by the absence of legitimate government (the jurisprudential argument). To refute it, Brilmayer uncovers the ugly moral assumptions lurking behind such an argument. Realists assume that where nations have continued interests that cannot be advanced through the world's political process, they are entitled to pursue them by any means. This, however, presupposes a controversial moral view about means and ends, namely that the end justifies the means. Even more revealing, the realist is assuming that the interests in question are worthy — surely a moral belief after all. Brilmayer shows that realists portray domestic politics in the best possible light while describing international politics in the worst possible light. Kenneth Walz and other realists presume domestic legitimacy if there is a government of some sort — any government. In international relations,

however, realists presume illegitimacy, even if there is a "government" of some sort, i.e., the hegemon. Brilmayer rightly denounces such a methodological double standard. In short, the first part of *American Hegemony* is a powerful, sophisticated, and I should think definitive refutation of realism.

II. THE LIBERAL THEORY OF HEGEMONY

Lea Brilmayer's work can be seen as contributing to a relatively recent literature that reacts against a model of international law and relations that seems at odds with important liberal beliefs. The realist's dismissal of morality (already discussed) is perhaps the starkest example of such illiberal assumptions. Another one is the assumption that governments and states matter more than people, which is incompatible with the normative individualism that is the centerpiece of liberal philosophy and politics. Against such models, Brilmayer offers a normative theory of international relations specifically aimed at showing how international political power can be justified on liberal grounds.

Her first step is to explore whether hegemony can be justified by appealing to consent. She discusses various forms of consent: contemporaneous consent, ex ante consent, and hypothetical consent. Subject to some reservations, Brilmayer concludes that sometimes (but not always) hegemony can be justified on one or more of these arguments. For example, if nations have in advance agreed that the U.N. Security Council may authorize the use of force to counter aggression, and the Security Council in fact authorizes the United States to use force for that purpose, then the United States is exercising military power with the world's ex ante consent, given by universal multilateral treaty. The U.S. then would be a legitimate "world policeman." Both contemporaneous and ex ante consent are conditional on settling significant preliminary issues, such as whether or not it is possible to infer consent from very general norms, and, most important, whether or not governments are always deemed to have consented for their citizens (I will come back to this problem, statism, below). Brilmayer has interesting things to say about these issues; for example, she points out that the collective self-defense rationale is quite inegalitarian since it allows only those states who have the stronger allies to defend themselves. The book also contains good discussions of inalienability and coercion. Can a government consent to U.S. hegemony, for example, by signing away its sovereignty (Puerto Rico may be perhaps an example)? Under what conditions is ratification of a treaty consensual and not coerced? All these are matters that people committed to "global liberalism" must take

seriously. Each case of alleged consent must be examined, Brilmayer concludes, on its own merits.

Most interesting is Brilmayer's discussion of hypothetical consent. Here she examines the claim, fashionable among international relations specialists, that hegemony can be justified by appealing to the notion of market failure. The argument is that hegemony is the only way to secure the provision of public goods. Governments left to themselves do not actually consent to arrangements that secure such provision because of communication failures and other transaction costs that cloud their rationality, as it were. If they were not so clouded, they would consent to entrust the provision of those public goods (i.e., national security) to a stronger state. Since they do not in fact consent, however, the hegemon must take over and assert its authority to correct this market failure. Brilmayer correctly points out that this argument proves that *some* hegemonic power is necessary to provide those public goods, but that the exercise of actual political power must be scrutinized to see that it is not abusive, before it can be deemed legitimate.

Brilmayer locates the market failure argument and other consent arguments within liberal theory. This is understandable, given the liberals' insistence on popular consent as the proper justification of government. Yet perhaps it is worth noting that the market failure argument is not a liberal argument at all; it is rather a Hobbesian-realist argument. For a weaker government worried about the provision of public goods might well have concluded (say in 1980) that the Soviet Union was the right hegemon to rely upon. Alternatively, that government may have been indifferent as to which superpower to bestow power on, as long as either of them could efficiently provide the "public goods" (basically order, stability, and security) in question. This line of argument, though, in spite of its superficial and elegant simplicity, strays as far from liberalism as a political argument can. A necessary condition for liberals to recognize the legitimacy of hegemonic power is that the hegemon itself be committed to substantive liberal values, regardless of the question of market efficiency or the solution to security dilemmas. Thus a necessary condition to saying that the United States is a justified hegemon is that the United States be committed to the protection of values that liberals hold dear: human rights, democracy, and generally the respect of individual autonomy and dignity.

If this is so, what is the proper role of consent, actual or hypothetical? It seems that one is either a Hobbesian or a Kantian on these issues, and that the two models (rational consent or natural law) do not always coexist in harmony. The question can be put this way: consent is indeed a necessary condition for the justification of government, but it is

not a sufficient one. Political power must be justified both in its *origin* and in its *exercise*. The origin, the pedigree of government is a necessary condition for its legitimacy; and in this regard, consent plays a very important role. Government must be the result of the will of the people; it must genuinely represent the people. For liberals though, this is not enough. Political power must be exercised legitimately as well; it must respect the rights of individuals, and treat them with proper respect and concern. Thus, a government that is legitimate by origin (e.g., elected by the people) might be de-legitimized by its tyrannical behavior, and conversely, a benevolent government might be illegitimate in origin.

If we apply these very simple notions to international hegemony, a number of problems arise. Even if the United States (let us assume) wields power by consent, citizens in weaker nations might object to the actual exercise of power — for example, by claiming that U.S. behavior fails to respect their human rights. This fear may be reinforced by the fact that the hegemonic government (the U.S.) does not regard itself as obligated to advance the interests of people in other countries, but solely the interests of Americans. This difficulty leads to the problem of the legitimacy of the origin of the hegemon: people in other countries have not elected the hegemonic government. Maybe Brilmayer can get around this by pointing to contemporaneous or *ex ante* consent, but there is an additional difficulty. The hegemonic government not only was not elected by people in other countries, it is in no sense accountable to them. It does not see itself, nor do others see it, as politically responsible to the “governed.” I am not sure that Brilmayer would necessarily disagree with this line of reasoning. My aim, rather, is to show that these are genuine liberal concerns about hegemony that perhaps deserved a more extensive treatment in the book.

Brilmayer recognizes this tension between pedigree and substance in her discussion of substantive morality, but this part of the book has, in my view, less appeal than the first one. This is due, in part, to Brilmayer’s refusal to discuss possible universal foundations of liberal values. There are also other problems in her discussion of intervention. For example, she insists on the non-selectivity of humanitarian intervention. This seems odd, however: if I have the right to intervene to rescue innocent victims, it does not follow that I also always have a duty to do so. I might refuse to intervene even if I have a right to do so because of the prohibitive cost of victory (think about intervention in China), or because I just do not have the necessary resources. The mere fact that the United States chooses to intervene in Haiti but not in Bosnia does not cast doubt on the legitimacy of the Haitian intervention itself. In

fact, the arguments given by the United States for its reluctance to intervene in Bosnia had nothing to do with the threshold question of a right of humanitarian intervention, but rather with the alleged logistical impossibility of succeeding. Liberal leaders are entitled to rely on these prudential judgments. They may of course be factually wrong (as I suspect they are in the case of Bosnia), but the fact that they do rely on those arguments cannot be used against the permissibility of intervention. If I am morally entitled to save two persons who are drowning, I might rationally decide that saving Smith is possible but saving Jones is not (for example, I would be seriously injured in the latter case). Brilmayer is right that the United States (or any other government, for that matter) should be non-selective in the moral condemnation of tyranny, but this does not automatically carry over to military action: there are important principles of morality and prudential statecraft that may justifiably prompt the hegemon to be selective. By the way, noninterventionists (not Brilmayer) have a funny way of arguing on this issue. They are against intervention, but when one supports humanitarian intervention in A, they retort: "But why don't you intervene in B also?" So their claim seems to be now the rather curious one that the hegemon is not intervening enough! In other words: the anti-interventionist uses the critique of the selectivity of the hegemon as an argument against intervention, whereas what the critique shows, at most, is that the hegemon should intervene more, not less.

Brilmayer's version of global liberalism falls short, in my view, of embracing all the consequences of the liberal vision. She rightly identifies the inherent tension between liberalism and statism. Statism is the view that states, not individuals, are the appropriate units of moral concern in a theory of international relations. Brilmayer points out (as have others before her) that by focusing on state consent and state autonomy rather than on individual consent and autonomy, both traditional theory and her own (which also focuses on states) seem at odds with important liberal commitments. As a way out of this problem, Brilmayer favors what she calls "qualified statism." By this, Brilmayer means that established governments are entitled to presumptive legitimacy as long as they respect some minimal moral limits. If they do remain within those limits (i.e., they do not torture, kill, or discriminate against their citizens) they can legitimately give or withhold consent. Brilmayer justifies this approach, at least in part, by pragmatic considerations. It would be impossible for the liberal hegemon to conduct its everyday business if it had to determine in each case whether a legal obligation was consented to by a legitimate government (in the liberal sense).

Still, it is far from clear why liberals have to make this concession to statism. It seems clear under liberal principles that if A consents on behalf of B to create rights in favor of C, the consent is morally valid only if A legitimately represents B. A liberal theory of international law and relations cannot escape this by falling back on the (illiberal) statist assumption of effective political power as the basis of international legitimacy. Undemocratic governments, then, are not valid consenting agents, come what may. However, Brilmayer is right that this view (which she calls "derivative statism," and which I and others have defended) poses serious problems for international relations. Should we disallow as illegitimate the consent given in the past to a treaty by an unrepresentative government? Here I believe Brilmayer falls into the realist trap: we must do it because this is the only pragmatically possible way to conduct foreign policy. The consent by an unrepresentative government is valid because there was no one else around to consent for that state. Contrary to Brilmayer's thesis, this view does not necessitate treating undemocratic government as legitimate or their consent as morally valid. If the undemocratic government consented to the treaty, democratic governments will abide by the treaty for a number of reasons *unrelated to the validity of consent*. One is purely prudential: it is necessary to honor the treaty in order to induce the illiberal government to do something which is morally desirable (e.g., nuclear disarmament). Thus the U.S. must arguably honor the recent agreement with North Korea, not because it believes that North Korean consent was validly given (it was not), but because so doing creates an incentive for the North Korean dictators to do something which is substantively desirable. Similarly, if the commitment is beneficial to the oppressed population rather than to the dictator, then honoring it is the right thing to do, quite independent from the question of legitimate consent. The basis for honoring the commitment entered into with an illegitimate government is thus not *pacta sunt servanda*, since there has strictly been no *pactum*. The basis is instead a mix of prudential and moral factors that are quite independent of the legitimacy of the unrepresentative government or the moral validity of its consent.

Brilmayer's reply to this argument is not very convincing. The view that the agreements entered into with undemocratic governments must be honored only if they are substantively desirable (she argues) is inconsistent with international law which gives special weight to the fact that the undemocratic government did consent. This begs the question, though, for part of what we expect from a normative theory of international relations is to tell us what is wrong with international law, and this is one of those things: that it improperly enfranchises undemocratic

governments. Brilmayer also believes that the "substantive desirability" argument is too paternalistic in that it does not respect the autonomy of the people in undemocratic countries. Again, this move simply assumes state autonomy, which is the very notion challenged by genuine global liberalism. State consent is important (indeed dispositive in most cases) when the government validly consented, and this happens when the government genuinely represents the people. If that is not the case, liberal democracies must try their best to do the right thing, which includes respecting the human rights of everyone and encouraging (and sometimes forcing) democratic reforms in those states. Put differently: liberalism cannot countenance the "opacity" of the state. Brilmayer, however, wants to justify a more liberal world while retaining the assumption of opacity. As Kant (whose work is strangely absent in a book devoted to the defense of liberal internationalism) showed 200 years ago, it matters greatly how nations are organized internally, if not for any other reason than the fact that only a world of liberal democracies can achieve both peace and justice.

III. CONCLUSION

My overall judgment of this book is very positive. The above criticisms attempt to show that perhaps the liberal view needs to be pressed even further than Brilmayer does, but her thesis is still philosophically and politically attractive. If adopted and implemented by democratic leaders in their conduct of foreign policy, the world would be a better place. While I personally believe liberalism requires at most derivative statism (i.e., the view of states' rights as entirely derivative of individual rights), Brilmayer's qualified statism is a healthy improvement over prevailing models of international law and relations. *American Hegemony* steers the debate away from ruthless Hobbesian paradigms, and vindicates instead the elusive humanitarian ideal of a cosmopolitan world order that rests on the universal respect of freedom and reason. With this book, Lea Brilmayer confirms the important place that her work already enjoys in the literature.