

**LESSER OF TWO EVILS: RESPONSE to Michael Ignatieff
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In The Trojan Women, the 2000 year old Seneca play, the vanquished, imprisoned women of Troy are brutally forced to surrender two of their children to the victorious Greek invaders. The Trojan Women is currently being directed by Mary Zimmerman at Steppenwolf Theatre in Chicago.

In the smoldering rubble of a prison camp in Troy, the captive women strive to prevent the sacrifice of their children by the conqueror Ulysses who demands that the surviving male child be hurled to his death from the tower. As an additional twist, the surviving daughter is to be surrendered to the victors to be married, and then slaughtered. “Madam,” he says, “I speak officially...as a part of my duty...it isn’t easy, but I must ask you to give him over to us. He threatens the peace. His life is a danger we cannot allow to continue to undermine the entire region’s collective security. Greek power and prestige cannot be questioned. Ours is a stabilizing presence...” The women, about to be enslaved themselves as prizes by Greek commanders, lament: “Never did we imagine the ground we stood on could give way...we believed ourselves to be safe.” Indeed, the ancient play by Seneca resonates for these terrible times.

Our moral choices here in the epicenter of empire also involve the uses and consequences of power and prestige – whether and how to question, to challenge, to resist.

Certainly, Professor Ignatieff is right that moral choices rarely present themselves as blinking green light/red light choices. They involve often anguishing deliberation amid conflicting, but powerfully cherished, values. And Ignatieff is also correct that the failure to act is as much a moral and consequential choice as acting (“yet we must act, since inaction in itself will cause harms that are just as great,” Ignatieff, p. 2); I agree that the battles for hearts and minds – domestic and international – are ultimately decisive. Despite the use of overwhelming U.S. military and economic force, aggression in Afghanistan, in Iraq, in Panama or Haiti is only the first, and easiest, chapter of conquest and victory. I agree with Ignatieff’s definition of terrorism and his observation that acts of terror can be – and are - committed by individuals, non-state actors/organizations, and by nation states themselves.

It is a sign of the times that one is required to assert the obvious: the criminal and unspeakable attack on the World Trade Center and the civilian population of New York City heralds a new danger. Every nation has the right and duty to protect its population and mobilize a response to reduce the threat of this network of right wing, fundamentalist terrorists (but whether the response is a proportional, police/targeted response, or unlimited military war is significant). Saddam Huessein, in part (like Osama bin Laden) a creature of U.S. intelligence, was an unspeakable dictator. But there is no substantial evidence of the former Iraqi regime’s connection to Al Qaeda, nor of their imminent threat to U.S.

Professor Ignatieff's speech is the first chapter of a book, so it is necessarily vague, leaving the analysis of pre-emptive war, permanent war, torture and extra-judicial execution to yet unseen chapters. So, to a work in progress, I offer two comments: first, to assume and assert that human rights must be embedded in a structure of international law and institutions, not severed (with three editing suggestions); and second, to suggest a more global difference about the impact of empire on the realities of neo-liberal democracy.

1. "Human Rights" embodies morality, ethics, statecraft and international law, but to sever the concept of human rights from the edifice of international law is to subject it to every form of political justification. Much as civil rights, civil liberties, and due process stand for broad constructs, yet are grounded in particular Constitutional language and judicial interpretation, so have human rights standards been constructed and ratified in particular treaties. Three examples:

- Ignatieff says that liberal democracies do not defend against terrorism "without at least some sacrifice of its liberties". International human rights treaties provide for "derogation" of *some but not all* human rights. For example, in the face of a serious and active terrorist threat, international law might permit a government, *if necessary and if done by formal decree*, to ban street demonstrations or to detain suspected terrorists for a prolonged period. But there are certain other rights, such as the right to life and not to be tortured, that cannot be derogated even in wartime or in an emergency. (See for example, Article 4 of the International

Convention on Civil and Political Rights , to which the U.S. and 148 other countries are parties)

- Ignatieff says the Geneva Conventions which prohibit killings of civilians “are not peremptory, definitive or clear.” While there is indeed lack of perfect clarity on whether an unarmed terrorist is a civilian, etc., certain prohibitions are indeed peremptory (i.e., binding and not susceptible to local legislative override). For example, the killings of civilians are “grave breaches” of the Geneva Conventions and are war crimes which every state is obligated to punish. Ignatieff seems to imply that “surreptitious killing of terrorists” (p. 12) and perhaps torture (p. 13) may become necessary. Given the experiences of the Holocaust, the Gulag, Vietnam, and Rwanda, most nations have drawn strong conclusions about prohibiting torture and ratified the international Torture treaty. The express commitment of most of the countries of the world, including nearly all the “liberal democracies” are somewhat inconsistent but I read it that torture and assassinations --- like slavery – are always illegal (prohibited) and should remain so.
- Last, chapter 1 notes that even pre-emptive self-defense might be justified. This may be true, but the test cannot be “whether imminent hostile *intent* can be discerned and whether there are any viable alternatives to a military strike.” The standard cannot be merely imminent “*hostile intent*” but imminent “*attack*”! and

discerned by whom? President Bush? Donald Rumsfeld? Need it be objective and reasonable? In short, in Iraq, does the mere possibility that Saddam Hussein may someday attack the U.S. justify a pre-emptive attack? Not under international law, and not – I think – as a matter of morality either. One need only consider the same doctrine as applied by another country who feels *imminent hostile intent* by the U.S. (say Syria or North Korea) to see the problem of double standards. Of course, I assume that we – a nation among nations (less than 4.9% of the world's people) play by the same set of rules.

I believe that the 55 year effort sparked by the great anti-fascist coalition to constrain the most heinous consequences of war by nation states – the law of war or humanitarian law – is an estimable, vanguard undertaking. As with all law, it must be interpreted, applied and revised – this requires leadership, participation and compromise but it requires engagement. I am aware of the ironies *my* argument here for the rule of law, international law. *But human rights cannot be severed from the edifice and mandates of international human rights law and institutional structures that have emerged as part of the global struggle to acknowledge our common humanity.* These networks of interlocking human rights treaties have won the concurrence of most of the states of the world, and have been ratified by a significant majority of nations. Floating free, human rights is subject to being appropriated for the aggression of empire, wielded as a mere political or rhetorical tool, hijacked as a contemporary screen for unilateralism.

2. I fear that the Trojan Women, is foreboding: we are sacrificing the future safety of our children and later generations to the relentless drive for profit and empire being conducted in our name. Thus, my second concern.

Professor Ignatieff's remarks seem to paint a portrait of U.S. liberal democracy that reflects nostalgia for a golden age – without slavery, conquest, gender or class – that never existed. It appears that no one was much hurt or that these contradictions are not at the core. But we know too much about the costs and failures, the exploitation and wealth, alongside the cherished values. A sentimental perspective about (neo)liberal democracy requires a rhetorical innocence that would be charming if it were not so deadly.

How many U.S. military bases in East Asia and the Mideast, how many prisons at home, does it take to view our liberal democracy as “free of violence”? (“only liberal states go on to seek to eliminate violence altogether from the political realm... seeking to keep even the necessary and justified coercion of the state to a minimum.” Ignatieff).

We cannot ignore the long legacy of U.S. slavery, white supremacy and poverty, reflected today, in part, in the form of 2 million people incarcerated, in unequal life expectancies, in the growing gap between rich and poor, and in the continuation of two worlds, separate and unequal. Just three miles from this law school, 11,000 men of color are incarcerated, largely for non-violent offenses -- is this the “absolute minimum?” The daily-ness of this embedded violence amounts to a colossal “taken-for-granted” in ordinary life.

And doesn't the U.S. also export its violence? Today, the U.S. allocates \$400 billion per year on military spending¹, more than the *total* of the next 15 countries.

The fig leaves officially provided for the invasion of Iraq are transparently contradictory and involve admittedly outright lies and dissembling: Half the American people believe that Iraq had nuclear weapons, and half also believe that Saddam Hussein was supporting Al Qaeda; neither is true, as the U.S. administration itself acknowledges while denying. The secondary *post hoc* human rights justification for war fails to acknowledge U.S. support for Iraq during the time of greatest atrocities against its citizens (much as the heralded U.S. "liberation" of Afghani women served to silence questions and opposition to military aggression).

The overwhelming military strength of the U.S. resulted in another military rout over a weakened, devastated and shamefully brutally ruled nation (like Afghanistan, Panama). Is this string of cheap victories part of the thoughtful moral calculus of a strategy to weaken and disarm right wing, fundamentalist terrorist networks?

If anyone believes that current U.S. expansionism is principally about the war on terrorism: finding Al Qaeda terrorists, bringing democracy to other areas, or mitigating the dangerous terrain of failed states, look again. Examine Panama, Bosnia, Afghanistan, or Pakistan *after* U.S. military action. Of course, each example of intervention must be analyzed in the particular, with attention to the uses or abuses of international law, and the viability of local, democratic independence (for example, East Timor may be a success).

¹ Robert Kagan, *Of Paradise and Power: America and Europe in the New World Order*, Knopf, New York: 2003, p. 69.

What is really going on?

I contend that one cannot understand the dynamics our liberal democracies without a full frontal look at the newly shaped project of empire.

So let us quickly look at five more fundamental forces of political economy and geo-politics that underlay the revived us ideology of empire – buttressed by two doctrines that justify and shape it: permanent war and pre-emptive war.

- 1. Iraq has the world's 2nd largest oil reserves, among the cheapest to extract. Control of both petroleum and pipeline routes are at stake. U.S. occupation of Iraq immediately made possible military dis-engagement with Saudi Arabia.**
- 2. The U.S. has established a crescent of military bases in western Asia and the Mideast in the past two years: Pakistan, Uzbekistan, Tajikistan, Kyrgyzstan, Afghanistan, Qatar, Kuwait, Dubai, Oman -- from the Balkans to Djibouti, the Persian Gulf deep into the former Soviet Union - -- more pervasive than any time in American history. These involve protection of South Asian/Mideast oil and pipeline routes and serves both to secure American supremacy among the imperial powers, – and as a challenge to China in the 2nd part of the 21st century. As further evidence that the project of empire is a bipartisan U.S. undertaking, the very military that crushed Iraq and Afghanistan was constructed and expanded under the Clinton administration, *after* the collapse of the Soviet Union and with no visible threat to the U.S. This military**

hegemony is the basis for ruling by force, or securing economic hegemony.

3. The U.S. is challenging the growing power of the Euro and the EU, the sole current, potential challenger to U.S. solitary global control. Clearly the opposition of France, Germany and Russia to the war in Iraq involves their prior oil contracts with Saddam and their concerns about us intentions to contain them as competitors.
4. Direct control over the regions' oil is an important tool against future Chinese power. Capitalist China has needs for independent stable access to Central Asian or West Asian (Mideast) oil and gas. A look at the map of new U.S. military bases, from the perspective of China, is illuminating.
5. The “development strategy” led by the IMF and the World Bank is a documented failure. The growing number of desperately poor and impoverished, the massive indebtedness of the Southern hemisphere, and the absence of vibrant democracies have resulted – among other things – in the world social forum in Porto Alegre and a surprising new set of partners of resistance to U.S. empire.

And empire, of course, requires an internal, repressive apparatus and the construction of panic, fear and submission to authority at home. A fresh reading of the two Koromatsu decisions is in order.

On February 15, an unprecedented 10 + million people engaged in a worldwide protest against the impending U.S. war in Iraq. In fact, the second U.N. Security Council non-vote – the inability of the U.S. to obtain the votes necessary to

make the war “legal” pursuant to international law – was a humiliating U.S. defeat. The Onion newspaper, as usual, got it right with their recent headline, “U.S. declares a new UN: the “U.S./UN”.

Unilateral aggression and hegemonic empire are *not* a path to security. They create instability and resistance. They divide and deplete, crush and incarcerate at home. Empire is a road to ruin, both for the world’s people and for people here. Instead, a fundamental re-orientation of U.S. power and prestige is required based on some working assumptions:

- all lives are equally valuable (those 7,000 Muslim men and boys in Srebrenica, Afghan elders, Iraqi children, U.S. soldiers, tribal men who remove their uniforms....)
- the U.S. is a nation among nations. If we insist on separate rules, we will come to grief.
- self determination and independence for countries and peoples is a cornerstone for justice and development.
- the project of international human rights law deserves our engaged support – to set limits on wars and destruction, to encourage resolution by international organizations, to promote rights as developed by international courts and tribunals. Human rights must be debated, revised and given meaning by popular struggles that become embodied *within* this system of international law.

Nelson Mandela wisely warned that the impending war in Iraq:
“...threatens world peace in the longer term. These actions seriously undermine

multi-lateralism, the only way of bringing order to world affairs. The rise of unilateralism, on the part of a single nation or groups of nations, flies in the face of all attempts to build a new democratic world order based on principles of equality and social justice.”

Our challenge is to become a significant democratic force for those principles, here in the heartland of empire.