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REGIME CHANGE

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Who have been against regime change, other than the regimes threatened with change?

Early thinkers

Aristotle in the 4th century BC explained how to avoid regime change in Book 5 of his *Politics*, because civil war had been such a curse for the Greek city-states. Freedom from civil war may be more important, he thought, than whether the regime under which one is living is one of the better types.

In the thirteenth century AD, Thomas Aquinas did not mention regime change as one of the possible motives for a just war. But he thought the assassins of Julius Caesar justified, because Caesar got power illegitimately through violence.¹ Further, tyrannicide is not seditious, unless it creates suffering out of proportion to any benefit; it is the tyrant who creates sedition, by failing to serve the common good.²

A little later, Marsilius of Padua who lived in the thirteenth to fourteenth centuries, made the power of kings and Popes depend upon the people, so that the Pope had no power to depose a king.³ This initially suited Ludwig of Bavaria who had himself crowned by the Roman people without the Pope's sanction and then deposed the Pope. But when the Roman people deposed Ludwig in turn, hoist by their own petard, he and Marsilius were forced to flee.

The most impressive of the early discussions was that of the Spaniard Vitoria, who in 1539 wrote against regime change by his fellow-Spaniards among the American Indians, except under two rather particular circumstances.⁴ Even if injustice can only be rectified by invasion, it does not follow that regime change is justified. Further, he declared in the same year that the American Indians had the right to rule themselves, unless they could be shown to be like orphans who needed someone to rule them, but that would have to be for their own good.⁵ Vitoria was also the first to rule out religion as a possible justification for war. His successors, such as Grotius, were more opportunistic about regime change.

English kings and a philosopher

James I, King of England from 1603-1625, was confronted by the Gunpowder Plot in 1604, and made all Catholics in the realm swear an Oath of Allegiance, according to which they would not kill him, if the Pope declared him deposed. King Henry IV of France was assassinated in 1609. So the Spanish Jesuit Suarez chose a sensitive time in 1613 to publish against James his *Defence of the Catholic Faith Against the Errors of the English Sect*. The book was burnt in London and Paris. Following Thomas Aquinas, it allowed the killing of a ruler who came to power illegitimately. But as regards a legitimate ruler like James, it allowed killing only after a legitimate sentence had been declared on the grounds that the ruler was not serving the common good, which in natural law was the basis of the ruler's power. And among further safeguards there was also Thomas Aquinas' insistence on proportion – not doing more harm than good.⁶

Charles I of England was executed later in 1649 only after a formal sentence had been passed.

20th Century

¹ In *Sent.* 2, dist.44, q2, a2.

² *Summa Theologiae* 2.2, 42.2, ad 3.

³ In *Defender of the Peace*.

⁴ *On the Law of War* Q 3, a 9 and in 1537 *On the Dietary Laws* 1.5.

⁵ *On the Indians* Q 3, a 8.

⁶ I have benefited from Harro Höpfl, *Jesuit Political Thought*, Cambridge 2004, Ch 13 and from a draft chapter on Suarez, which Terry Irwin was kind enough to show me from his forthcoming history of ethics.

Vitoria's idea about orphans was revived in the form of trusteeships in the 20th century. But Noah Feldman has argued that the Hague Conventions envisaged returning an invaded country after a period of trusteeship to its original owner, whereas the League of Nations envisaged returning things after a period of trusteeship only to the developed nation, not to the original ruler. The latter idea was resuscitated in connexion with the invasion of Iraq in 2003, after a period of disuse, when first a longer period of US military rule was discussed and then a shorter period decided on of military rule by a 'Provisional Authority' consisting of the USA and Britain.

In 2002, The British Attorney General, however, warned the British Prime Minister that regime change was not legal in international law as an end in itself, but could only be justified if shown to be the sole means to some other legitimate aim.

Two thought-provoking rationales for regime change: (1) Philip Bobbitt

In *The Shield of Achilles* (Knopf 2002) Philip Bobbitt gives a highly original account of European War going back to the ancient Greek historian Thucydides, and adorned with the most wonderful poetry. I write with admiration in spite of expressing disagreement. Bobbitt argues that the sovereign nation state came to an end in 1990, with the end of the Soviet regime, and its demise was made apparent in the former Yugoslavia by the failure of the United Nations, the society of nation states, to prevent massacre in Srebrenica and by the subsequent invasion of Kosovo, part of what had once been regarded as a sovereign country; an invasion vetoed in the United Nations, but led by the USA.

The nation state, on this view, has been replaced by the market state. The market state cannot offer security, which in the modern world is no longer available, but it can offer opportunity to conquerors and conquered. It needs legitimacy, but this is provided by its bringing democracy. The bringing of democracy implies regime change.

To mention three disagreements, I believe that legitimacy requires attention not only to opportunity, but also to justice. Secondly, for a market state to have legitimacy, it will need to be seen as just even by those it may be invading. And this requires it to have a reservoir of people with an intimate understanding of the history, outlook and religion of those who may be invaded and of people with the ability to communicate at every level, which presupposes a tradition of intensive language training on a large scale. Thirdly, I myself believe that we will live in a more peaceful world, if instead of having such market states, we respect sovereignty unless certain things are wrong. The Western tradition has for long concentrated on one example of this, satisfaction for injustices when that cannot be obtained except by invasion, with or without regime change. But more recently, there has been concern with preventing imminent and massive human catastrophe and still more recently with the legitimacy of secession, like the recent secessions of smaller countries from the Soviet Union. There are a number of different forums in which the 'unlesse's may be hammered out and agreed on. But I do not believe this approach should be superseded. The advantages of the market state may seem less attractive in the West, if we imagine, let us say, China soon becoming the most powerful market state.

Rationales (2) Noah Feldman

Noah Feldman is, for a start, a wonderful scholar of attitudes in medieval Islam and Judaism to war and conquest, having written about those two contemporaries Averroes and Maimonides, who belonged respectively to the conquering and the conquered communities of 12th century Spain. But he has also been Senior Adviser to the US Government on the Iraqi Constitution. This expertise lies behind his book, *What We Owe Iraq* (Princeton 2004) in which he makes a suggestion whose thoughtfulness I admire, even though I disagree with it.

It is too much to ask, on this view, that the main motive for an invasion should be the benefit of those invaded, because everyone is motivated by their own interests. The benefit of the others should be required as a constraint on pursuing one's own interests, rather than as the primary motivation. Democracy does constitute a benefit, and the bringing of this benefit presupposes regime change.

My first doubt about this proposal is that if the introduction of democracy is always a benefit, then it is too easy to believe that the constraint is being met, so that it will not act as a sufficient constraint. I am also not sure that governments always try to act principally in their own interests, or that the invasion of Kosovo a little earlier was principally motivated by the invaders' interests. The huge cost and difficulty of the subsequent nation-building was surely foreseen. At most, there may have been a balance of costs between action and inaction, but the salient point was the certain and imminent human disaster if action was not taken. Nor was regime change a primary purpose. Admittedly, the invasion was illegal, because it had been vetoed by Russia at the United Nations, and illegality is a very serious consideration, given the kind of world in which I believe it is best to live. But given the imminent and certain human disaster, I do not myself believe that the Kosovo invasion was immoral as well as illegal.

REGIME CHANGE IN ISLAMIC TRADITION

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Professor Sorabji's précis of remarks begins with these lines: "Regime change was such an attractive idea. Was anyone ever opposed, except the victims?"

I should like to organize my comments around these lines. From the standpoint of Islamic tradition, regime change was, and indeed remains, an attractive idea. It is so because the problem of tyranny. At the same time, particular cases of regime change are complicated. Thus, Muslim scholars suggested that responsible regime change requires answers to several questions: Who has the right to authorize regime change?; When is regime change advisable?; and most importantly, how is regime change to be accomplished?

The attraction of regime change

In considering those things that make regime change attractive, it is important to focus on the moral attractions of the idea. One should not deny that regime change possesses other sorts of attractions. It is or can be a way of amassing wealth, increasing land holdings, winning fame and glory, or pursuing power. However one will not understand regime change in Islamic tradition, apart from the moral attractions of the notion. For that matter, I think a grasp of the moral attractions of regime change is necessary when thinking about the power of the idea in our own time.

Muslim scholars saw regime change as a means of dealing with tyranny. Two passages from the Qur'an provide insight into this. Qur'an 79:15ff. begins with the question: "Have you heard the story of Moses?" The passage proceeds as a recitation of the tale:

"His Lord called out to him in the sacred valley of Tuwa: 'Go to Pharaoh, for he has exceeded all bounds, and ask him, 'do you want to purify yourself? Do you want me to guide you to your Lord, so that you may hold him in awe?'"

Moses follows this invitation with the performance of miraculous deeds. Nevertheless, Pharaoh refuses the offer of guidance:

He turned away and hastily gathered his people, proclaiming, 'I am your greatest Lord,' so God condemned him to punishment in the life to come as well as in this life. The passage concludes that "there is truly a lesson in this for anyone who stands in awe of God."

Unfortunately, tyrants do not stand in awe of God, or indeed of any other power. Pharaoh illustrates this, in that he 'exceeds all bounds,' a phrase indicating that he violates the limits of moral propriety. With tyrants through the ages, Pharaoh regards the people and land for which he has oversight as 'his own.' He does not rule for the common good; rather, Pharaoh rules for personal gain. He tells his people "I am your greatest Lord," meaning that there is no other to which they may appeal. The vocabulary is a Muslim vocabulary, but the image is familiar to all. Islamic tradition regarded government as a necessity, and good government as a blessing. Indeed, Muslim scholars generally argue that even bad government is usually better than the alternative. But some governments are tyrannical, and one should strive to change them.

In Qur'an 79:15ff., Moses tries to deal with tyranny through preaching. Islamic tradition typically prefers that regime change occurs by this means, viz., that the ruler who 'exceeds all bounds' recognizes the error of his ways, and repents. In Pharaoh's case, as in many others, this will not work. Thus one must turn to a second passage, in which fighting is commanded. Qur'an 4:75 occurs in the context of the long struggle between the early Muslims and the Quraysh, the most powerful tribe in Arabia during the sixth and seventh centuries C.E. From the Muslim point of view, the leaders of this tribe were tyrants, as demonstrated by their attempts to suppress Islam. The chronology of the struggle is given in the works of Muslim historians. Their accounts correlate with a reading of the Qur'anic verses dealing with fighting. From these accounts, we learn that Muhammad, like Moses, first confronted tyranny with preaching. When that failed, he turned to military means. At 4:75, the struggle is reaching its crescendo, and thus we read:

"Why should you not fight in God's cause and for those oppressed: men, women, and children who cry out, 'Lord, rescue us from this town whose people are oppressors! By your grace, give us a protector and helper!'"

In this text, tyranny is identified with oppression. Most commentators suggest those 'who cry out' are Muslims prevented from practicing Islam by the leaders of the Quraysh. They may also be people desirous of hearing the message of Islam. In either case, the attraction of regime change is clear. It is a way of dealing with tyranny, and thus of restoring God-given rights of justice and dignity to those who suffer.

The complexities of regime change

This moral attraction of regime change is a constant in Islamic tradition. As people say, however, the 'devil is in the details.' When Muslim scholars addressed the particulars of regime change, they expressed a number of concerns.

For example, who has the right to authorize regime change? From the time of Muhammad's death in 632 C.E. to the middle of the eighteenth century, the answer of the majority (Sunni scholars) went as follows: the right of regime change belongs to the Caliph or sovereign head of the Islamic State, in consultation with recognized religious authorities. By contrast, the right of regime change does not belong to private citizens. Muslim scholars understood that the idea of regime change carries anarchic tendencies. The idea is attractive, and may in some cases be considered a moral imperative. Yet human beings make mistakes, and it is therefore best to limit the right of implementation to those assigned to rule.

The minority (Shi'i, scholars) pressed the question: What if the ruler is unjust? In the Shi'i view, only the divinely appointed Imam or leader has the requisite knowledge and character to authorize regime change. As history shows, the various Shi'i groups found it difficult to agree on the identity of the leader. Further, for the largest group, the twelfth Imam was taken into hiding by the will of God in 873/74, where he will remain until God orders his appearance. At that time, the rightly-guided leader will command a war that will drive out tyranny for a thousand years. In the interim, Shi'i scholars through the centuries delimited the right of rulers to 'imposed' wars. In recent times, the Ayatollah Khomeini put forward the controversial idea that religious scholars might lead the people in a campaign to depose a ruler whose record reveals him as a rebel against Islam. Khomeini argued that the record of Shah Reza Pahlavi fitted this description, and thus justified regime change. Similarly, the war between Iraq and Iran in the 1980s was interpreted as one in which Saddam Hussein rebelled against Islam by attacking an Islamic State. Khomeini and other Iranian leaders hoped to depose Saddam, and thus to create space for the Iraqi people to form a new government. That this did not occur was a disappointment, which Khomeini described as "worse than drinking poison."

Despite their differences, both Sunni and Shi'i scholars avoided assigning the right of regime change to private citizens. Contemporary Islamists (most Sunnis) argue differently: If there is no ruler able or willing to secure Islamic interests, the right of regime change falls to the people, or to a vanguard who will lead them. This argument, put forward by Usama bin Ladin and like-minded persons, gives many Muslims pause. The idea of regime change is morally attractive. But if anarchy or something worse results from the effort...what then?

In addition to asking 'who may authorize regime change?,' Muslim scholars worried about when regime change is advisable, and how it will be accomplished. With respect to when, the majority argued that a non-Muslim regime should be invited to acknowledge Islam. Should the target government decline, that is proof of its tyranny. Here it is important to note that the majority did not consider wars aimed at changing non-Muslim to Muslim regimes as 'conquests.' These were wars of "opening," based on the notion that Islam is the natural religion of humanity and that non-Muslim regimes are preventing people from enjoying God-given rights to hear and respond to the call to faith.

From the Shi'i point of view, the practice just described holds only when the divinely appointed leader is present. In his absence, as noted, it is possible for the religious scholars to authorize regime change if a ruler resists Islam by force. In the contemporary Islamist discourse, the idea is that governments unable or unwilling to implement God's law are illegitimate, and should be removed. Some Islamists make distinctions between the 'near enemy' and the 'far enemy,' which might map onto a distinction between regime change in one's own country and in someone else's. Yet diverse instances of tyranny can be connected, and thus al-Qa`ida's program is built on the notion that fighting against unjust regimes should be carried out on multiple fronts: 'in any country where it is possible, by anyone who has the means.'

As to how regime change should be accomplished, we have the most longstanding set of limits placed on regime change in Islamic tradition. For Muslims through the ages, fighting in the path of God requires observance of distinctions between civilian and military targets. This holds for both Sunni and Shi'i scholars. The type of fighting called for by Usama bin Ladin and others, in which there is a settled policy of indiscriminate warfare, is most unusual. Further, classical Sunni and Shi'i literature worries about the use of certain weapons, on the grounds that their use may cause unacceptable levels of damage. In such cases, a scholar like al-Mawardi says quite clearly that Muslim forces must discontinue fighting; they must strike the best treaty possible, and come back to implement regime change when circumstances suggest a higher probability of success. The point is twofold: one may not employ immoral means in the service of a moral end; and one must take care, even in the struggle for justice, that one's actions do not result in more harm than good.

Concluding remarks

The current struggle in Iraq provides the occasion for this discussion. Iraq presents special features for Muslim scholars, since the deposition of Saddam comes from the 'outside.' Many expressions of Muslim opinion focus on this. Thus the Qatari scholar Yusuf al-Qaradhawi argues that the presence of US, UK, and other forces presents a cause of war, and every Muslim should support the Iraqi resistance. Al-Qaradhawi is joined in this opinion by the Shaykh al-Azhar and other Sunni authorities. In terms of Islamic tradition, the worry here is over who has the right to authorize regime change. It is important to note, as well, the vigorous and ongoing debate among Sunni scholars regarding the tactics of those involved in resistance to US and UK forces, which again reflects traditional concerns regarding the how or means of fighting.

The opinion of Shi'i scholars is different. The Lebanese Muhammad Husayn Fadlallah declares that Islam allows for non-Muslim forces to come to the aid of oppressed Muslims, and that the Iraqi Shi'a should welcome US and UK help in deposing the tyrant Saddam. The Ayatollah Sistani's view is similar. However the Shi'i 'welcome' comes with a proviso: American and British forces must not reinstate colonial rule. This proviso is one of the roots of the opposition of Muqtada al-Sadr, who from the beginning has been more suspicious about US and UK motives than other Shi'i leaders.

I conclude that Islam makes the attractions of regime change very clear. It does so by focusing attention on the problem of tyrannical rule. At the same time, Muslim scholars dealing with particular cases addressed questions regarding who has the right to attempt regime change, as well as when and how regime change should occur. With respect to how, Islamic tradition is particularly clear: one must never employ immoral means in the service of regime change, and one must further ask whether regime change may in some cases bring about more harm than good. To put it another way, one can always wonder whether, in a given case, a change that may in some sense be right, will also prove wise. These strike me as good questions for all of us to ask, whether or not we are Muslims.