

THE LEGACY OF LEO STRAUSS

Edited by

Tony Burns and James Connelly

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Rob Howse¹

Man of Peace: Rehearing the Case Against Leo Strauss

Introduction

Was there a coherent foreign policy doctrine or a philosophy of world politics behind the United States decision, along with its allies, to make war on Iraq and destroy the regime of Saddam Hussein? If so, is there a view about international law, either explicit or implicit, in this doctrine or philosophy?

A range of media commentators and academics have suggested that the decision to go to war was prepared and decisively influenced by a perspective on world politics derived from 'Straussianism', a school of thought that developed around the teachings of Leo Strauss, a twentieth century German-Jewish philosopher who is well known as a critic of liberalism, and whose diagnosis of the spiritual and intellectual crisis of modernity led to an attempted recovery of pre-modern philosophical perspectives on thought and politics, as a way of understanding the crisis and perhaps also as an alternative to 'nihilism' and to the political implication of nihilism – fascism.

Much has been made of Strauss's hostility to liberalism, but to the extent he criticized liberalism this hostility is largely based on liberalism's embrace of relativism and positivism, the separation of morals from law and politics, which Strauss saw had rendered Weimar liberalism impotent to counter the extremists with effective arguments and counter-strategies. One cannot underestimate the impact on Strauss of the collapse of the moderate centre in German politics, and the spectacle of the Weimar as

¹ This much shortened and revised version of my paper for the Nottingham conference was presented as my inaugural lecture for the Lloyd C. Nelson Professorship of International Law at New York University, October 7 2008. I am grateful for reactions to the longer manuscript and/or the lecture from among others David Janssens, Stephen Holmes, Alan Gilbert, Peter Berkowitz, Peter Minowitz, Alexandra Kemmerer, Paul Sunstein And Christina Tarnopolsky, as well as the comments of various participants in the conference. Above all, my gratitude to Ruti Teitel for her support, enthusiasm and wise counsel.

'justice without a sword or of justice unable to use a sword', incapable of standing up to fanaticism: Strauss witnessed these events with his own eyes in his formative years as a Jewish scholar in Berlin.² Contrary to some critics of Strauss, however, the failure of Weimar democracy did not lead him to conclude that liberal democracy is necessarily weak or unable to maintain good public order. He noted that 'there were other liberal democracies which were and remained strong' (Strauss, 1968: 225) through the economic crises and instability of the 1920s. While drawing some general lessons about the vulnerabilities of liberal democracy as a form of government, his explanation of the failure of liberal democracy in Weimar focuses on the specific political history and pathologies of German civilization.

Strauss notoriously attracted students who were conservatives and even reactionaries. This was not only because of his critique of liberalism (which does not necessarily imply an endorsement of conservative thinking), but because of the potential for the recovery of 'classical' thought to legitimate all kinds of prejudices which had become disreputable as 'elitism', 'sexism', and so forth. Did the ancients not believe in slavery? Did they not regard giving citizenship to women as unthinkable? Just as the Nazis had invoked Nietzsche as a 'great mind' to give philosophical weight to their prejudices, Strauss might have opened up the possibility for American conservatives and reactionaries to invoke Plato and Aristotle for purposes of giving intellectual respectability to positions generally viewed as crudely 'redneck', as dark superstitions of the bad old days.

But Strauss did not present Plato and Aristotle as apologists or ideologists for conventional Greek politics; instead, according to Strauss, the distinctiveness of ancient political philosophy emerges through its critique — indeed a radical critique — of the adequacy of the Greek city as against the standards of perfect, or rational, justice.

According to Strauss, the unqualified rule of wisdom as presented in Plato is merely a theoretical construct for understanding the nature and limits of justice; its practical lesson is that the desirable form of political ordering is, as Strauss puts it, a mixture of wisdom and consent, a mixed regime that gives a proper place both to popular will and to the role of educated political, legal, and military elites:

The political problem consists in reconciling the requirement for wisdom with the requirement for consent... According to the classics, the best way of meeting these entirely different requirements — that for wisdom and that for consent or for freedom — would be that a wise legislator frame a code, which the citizen body, duly persuaded, freely adopts... [T]he administration of the law must be entrusted to a type of man who is most likely to administer it equitably, i.e. in the spirit of the

2 Here I rely on Strauss's own intellectual biography, 'Preface to the English Edition of Spinoza's Critique of Religion', the concluding chapter in Strauss (1968: 224, 224-5).

wise legislator, or to 'complete' the law according to requirements that the wise legislator could not have foreseen (Strauss, 1953: 141-2).

What differentiates this from the modern liberal idea of separation of powers and checks and balances is that Strauss, following the classical political philosophers, does not believe the mixed regime can work as a balance of self-interested powers checking each other; it depends also on the character of those who exercise power, the kind of education they receive, and especially their capacity to believe in a common good and their respect for the rule of law.

Be that as it may, a number of students or followers of Strauss have become prominent figures in American conservatism, especially neo-conservatism, Irving and William Kristol being the most famous examples.

The Indictment³

In a long and much cited article in the *New Yorker* in May 2003, the famed investigative journalist Seymour Hersh purported to unearth the fact that a closely knit group of Straussians in or near to the Bush Administration, most prominently Paul Wolfowitz, had essentially plotted the war against Iraq, seeking to gain public acceptance for the war through the fabrication or distortion of intelligence about WMD. According to Hersh, these Straussians were inspired by Strauss's view (as expressed by one of them, Abram Shulsky) that 'deception is the norm in political life'. Strauss apparently taught that politics is best practiced by a king (or tyrant) advised by a small circle of elite counsellors, always willing and able to deceive or trick the people into going along with what they want.

While such apparent teachings of Strauss could explain the alleged use of deception with respect to intelligence on WMD, they obviously go only to means and not ends, and thus do not appear to illuminate why the goal of making war against Iraq would itself be justified or rationalized by a Straussian moral outlook. Hersh himself noted, 'Strauss' influence on foreign-policy decision-making (he never wrote explicitly about the subject himself) is usually discussed in terms of his tendency to view the world as a place where isolated liberal democracies live in constant danger from hostile elements abroad, and face threats that must be confronted vigorously and with strong leadership' (Hersh, 2003: 48).

³ As is occasionally indicated in what follows many of the accusations against Strauss can be attributed to sloppy, incompetent or even mendacious interpretation and intellectual history. An extensive account of such criticisms and a sustained and cogent response is to be found in Peter Minowitz, *Straussophobia: Defending Leo Strauss and Straussians Against Shadia Durrty and Other Accusers* (Lexington Books: Lanham, MD, 2009). The present essay is however mostly concerned with responding to readings of Strauss that could plausible based upon competent scholarship and that have some credible basis in explicit statements in his works. The focus therefore is on a more adequate understanding of the relevant texts of Strauss rather than the exposure of incompetence and bias on the part of certain critics.

If this is the Straussian outlook on foreign policy, and if Hersh is right that the Straussians in the Administration knew that Saddam did *not* possess the threat of WMD, then it would have made no sense in a dangerous world to stretch and deplete crucial US military resources in defeating a non-dangerous enemy, given all the real threats which one might need to respond to by calling on those resources. A 'constant danger from hostile elements abroad' requires a very judicious use of weaponry and personnel. Moreover by 'crying wolf' (no pun intended), the Straussians would undermine the capacity to persuade the public of the need to respond with force to *real* threats in the future.

These difficulties with the notion that Straussianism was the outlook behind the Iraq War did not diminish the influence of Hersh's article; instead he merely provoked others, attracted by the idea of blaming Iraq on the Straussians, to fill in the gaps, by suggesting why Straussianism was not only as behind the supposed deception involved in the case for war, but also why Straussianism made the invasion of Iraq an attractive goal.

In her book *Leo Strauss and the Politics of American Empire*, Anne Norton claims that both Strauss and Schmitt endorsed permanent war or threat of mortal conflict because of a fear of world government as a degradation of humanity. Referring apparently to Schmitt's works on international law and his invocation of a conception of 'European' international law that both allows and constrains war at the same time, Norton suggests that Strauss or the Straussians went farther than Schmitt in approving the absence of any normative constraint whatever on the use of force. Strauss and his disciples are 'proponents of war without limits' (Norton, 2004: 123, 148, 144). According to this view, Strauss was able to criticize Schmitt for retaining a morality of war even while attaching a positive moral value to war or the possibility of war; Schmitt therefore remained within the horizon of liberalism, and was unable to become a perfect anti-liberal. What seemingly allowed Strauss to be such an anti-liberal, was what another prominent journalist, James Atlas, asserted in the New York Times to be Strauss's endorsement of 'the natural right of the stronger' (Atlas, 2003).

The natural right of the stronger was precisely the position taken by the Melian generals in the famed dialogue in Thucydides' *Peloponnesian War*, an important element of the outlook of Athenian imperialism as presented by Thucydides, on whom Strauss wrote a very long essay in *The City and Man*. But is the position taken by the Athenian generals the core of the teaching that Strauss derives from Thucydides? Strauss's interpretation is remarkable for its emphasis on aspects of Thucydides' work that have often been neglected by interpretations focused on the power politics of the Melian dialogue. The statements of the Athenian 'dove' Diodotus, in his plea for clemency for the people of a city that unsuccessfully revolted

against Athenian imperialism, including Diodotus's radical suggestion that the compulsion of the oppressed to rebel against domination is as natural as the compulsion of the strong to dominate, are suggested by Strauss to be truer to Thucydides' own teaching, and truer simply, than the position of the Athenians at Melos.

It has been claimed that Strauss endorsed or inspired by his thinking a modern version of this kind of idealistic imperialism, which underpins the mindset of those who advocated and planned the Iraq War. According to Alain Frachon and Daniel Vernet, writing in *Le Monde*, the neocon Straussians are 'idealistic and optimistic, convinced of the universal validity of the American democratic model' and prepared to impose it by force, through regime change; they extol the virtues of 'militant democracy' (Frachon and Vernet, 2003: 12–3). In the *New York Times*, Atlas points to a statement by Strauss in the introduction his book-length statement of classical political philosophy, *The City and Man* (a study which begins with Aristotle, proceeds through Plato, but *culminates* with Thucydides, who is given a treatment half as long again as that devoted to Plato's *Republic*): 'to make the world safe for Western democracies, one must make the whole globe democratic, each country in itself as well as the society of nations'. Immediately after quoting this statement, Atlas draws his conclusion that 'There's a reason that some Bush strategists continue to invoke Strauss's name'.⁴

Long before the attempt to link Straussian ideas to the Iraq war, Strauss's thesis that the philosophers of the past wrote so as to dissimulate the unorthodox nature of their thought created considerable enmity and suspicion among mainstream scholars.⁵ This thesis was based on Strauss's historical claim that, generally speaking, philosophy has been subject to persecution in most societies where it has existed, ranging from ruthless suppression to the mildest form, ostracism (Strauss, 1952: 32–3). The historical argument might not have been so hard to swallow by mainstream liberals, had not Strauss also given the impression that, at least for the ancient philosophers, the point was not only to avoid oppression of free thought but to protect society against dangerous truths that could be destructive of a relatively healthy or decent social order.

Strauss believed he had witnessed as a young scholar the way in which ideas of philosophical origin prepared the outlook of fascism, and indeed Nazism itself — the destruction of a liberal democracy. I myself do not see his advocacy of caution in expression, based in a sense of the social responsibility of intellectuals, as illiberal. He simply understood that one must balance the possibility that philosophical critique of society will be con-

4 Strauss (1964: 5). As will be explained later of this essay, the statement that Atlas quotes is in fact a *paraphrase* by Strauss of a position that he went on to criticize.

5 Howse (1999: 60), from which parts of this section are freely drawn.

tribute to emancipation from tyranny against the possibility that such critique could be abused by demagogues or false prophets, i.e., used as a basis for mass delusion, in the aid of new forms of ideological control. But there is more. Strauss appeared to teach that no society is completely rational. Every society requires for its ordering the acceptance of some myths and conventions, a sort of civil religion, which allows for trust between citizens and thus a politics of citizenship, which is characterized by open debate and deliberative decision-making under the rule of law. Thus,

...every political society that ever has been or ever will be rests on a particular fundamental opinion which cannot be replaced by knowledge and hence is of necessity a particular or particularist society. This state of things imposes duties on the philosopher's public speech or writing which would not be duties if a rational society were actual or emerging; it thus gives rise to a specific art of writing (Strauss, 1968: viii).

In most liberal democracies, there exist a range of particularist rituals and conventions that are connected to the building of public trust or public spiritedness, most of which today fall somewhere between compulsory invocation of divinity and purely secular symbolism. An example is the use of oaths for court witnesses and public office holders. The predominant tendency in modern liberal thought is to dismiss the importance of such devices: as guarantees against fraud, corruption and abuse of power in legal and political institutions, oaths and the like seem almost ridiculously ineffective compared with checks and balances, separation of powers, judicial review, a free and independent press, and so forth. Strauss's response, I believe, would be that, ultimately, these latter devices themselves depend on the *character* of those individuals who serve in legal and public offices, their sense of the sanctity of the public trust, and belief in a common good that unites the entire political community. Civic piety — for some rooted in belief in a religious orthodoxy, for others of us based in a natural intuition of conscience, or a reverence of our 'own' institutions, or even a deeply felt Kantian *Achtung fürs Gesetz* — builds character, and, moreover, sustains it under the pressures of public and professional life.

But the necessity of some kind of civic mythology assumes that each political community will remain bounded — while certain varieties of liberalism propose the answer to this problem as the world state, a cosmopolitan order. What then of Strauss's rejection of a 'world state', of cosmopolitanism? As for cosmopolitanism, Strauss's judgment is complex and subtle. Cosmopolitanism is not simply wrong in seeking a universal human common ground, a humanity that transcends differences of culture, nation, race, and so forth.

Strauss's views on the world state come into sharpest relief in his debate with the Hegelian Marxist philosopher Alexandre Kojève, presented in a book entitled *On Tyranny* (Strauss, 1999). In *On Tyranny* Strauss psycho-

analyses, as it were, the tyrant and the wise man as characters or human archetypes. At bottom, the deepest needs or desires of each cannot be satisfied in the sphere of the political: they cannot complete one another or answer each other's neediness, because each is in a *different* way a cosmopolitan, seeking a *different* kind of satisfaction that is transpolitical: each is not satisfied by political life but not for the same reasons. The tyrant wants to be loved by everyone and is for this reason inherently dissatisfied by the constraints of the political community; the wise man seeks admiration and friendship of others who are wise, regardless of whether they are citizens or foreigners — a *different* motivation for being dissatisfied with the limits of the closed political community.

It is this analysis of the *echec* of the tyrant/wise man relationship that sets the stage for Kojève's brilliant reply to Strauss. According to Kojève, the implication of Strauss's analysis is not that an alliance between the wise and the tyrant is not possible or satisfying, but rather that both must aim in their alliance for a truly *universal* goal, one that transcends the limits of the Greek city — the closed or bounded political community: this goal is the 'world state', the universal and homogenous state.

Alexander the Great, the student of Aristotle, already saw how it would be possible to 'go beyond the rigid and narrow confines of the ancient City' (Kojève, in Strauss, 1999: 170). On the basis of the universalism or cosmopolitanism of the *philosophers*, Alexander was able to imagine a truly universal state as the outcome of an empire 'in which conqueror and conquered are merge' and all become equal citizens: through mixed marriages and the merging of laws and customs, the prior particularist ties of ethnicity and religion are eroded and transformed into universal 'civilization' or 'culture' (Kojève, in Strauss, 1999: 170-1).

In reply, Strauss claims that the world state, even if based on 'universal agreement regarding the fundamentals' would not be stable, because such agreement would have to be accepted on faith by the majority of people, who are not able to work through philosophically the basis for such agreement. And, according to Strauss, every faith, or ideology, gives rise to a counter-faith or ideology, with its own counterclaim to universality. The diffusion of knowledge by the wise (*Aufklärung*) will not solve the problem because 'knowledge inevitably transforms itself into opinion, prejudice or mere belief' ('Restatement' in Strauss, 1999: 193).

But this leads to the more fundamental critique by Strauss of the world state, which is that, even if realized, it would not lead to the universal 'satisfaction' claimed by Kojève. Having argued that man humanizes himself through violent struggle and work, how can Kojève claim that man will be fully satisfied as man in a state where, as Kojève claims there is no need for further violent struggle, and men will work less and less, as technology increases the possibilities of leisure?

For this reason, it is likely there will be dissidents or resisters to the world state. 'There will always be men (*andres*) who will revolt against a state that is destructive of humanity or in which there is no longer a possibility of noble action and of great deeds' (Strauss, 1999: 209). Thus, the world state will in fact need to be coercive. In order to be effective as a basis for governing a vast, indeed global, administrative space, the philosophy on which the world state is based will necessarily have to be disseminated to lawyers, judges, civil servants, administrators in such a way that it becomes ideology or prejudice, or mixed with prejudice. But since it is this philosophy that justifies the universalism of the world state, it must be defended by the ruler(s) against critique or attack, even when it degenerates into a ideology tainted with prejudice or particularistic belief. This requires the suppression of free thought, and is in turn a threat to philosophy. The diversity of political regimes preserves freedom of thought; for in the world state there is no other political community to which the persecuted philosopher can turn for exile, either physical or spiritual. Ultimately, then, Strauss objects to the world state, not in the name of Schmittian warrior ethics but in the name of freedom — for much the same reason as the liberal or proto-liberal Kant objects to it in the *Perpetual Peace*.⁶

This brings us to Strauss's view of the role of law among nations in war and peace. Strauss's rejection of the idea of a world state, and his pessimistic view that the possibility of war among states or political communities was therefore unlikely to ever be abolished, did not — as is often assumed — lead him to reject the idea of international law as a constraint on conflict. There is today a cosmopolitan utopian narrative that supposes that international law's purpose is the construction of a universal, global order, a cosmopolitan constitution. And there is a counter-narrative that, based on some of the same observations that Strauss made, argues that actual power relations between states are the predominant force in international relations, and will always be so — international law may function as a useful coordination mechanism when it is in the self-interest of states to cooperate but it is naïve to view international law as a meaningful constraint when conflict between states escalates or has the potential to escalate to war. As against both of these narratives, Strauss asserts the indispensable

6 Of course, this argument presupposes that the world state cannot tolerate the questioning of its 'ideology', even in light of the true philosophical teaching on which that ideology is based. Thus, this argument of Strauss presupposes the prior argument that many non-philosophers will not be 'satisfied' by the world state, to the point of rebelling against it in such a way that the tolerance of intellectual critique becomes dangerous and destabilizing. I am far from sure that Kojève is not right that the rebels can be adequately handled by the police and the psychiatric system if their rebellion is irrational. If it is rational — that is, if they rebel because *in fact* they do not receive the recognition of free and equal citizens, the recognition that should lead to satisfaction along with recognition through work and family life — then this means that the world state is as yet imperfect in its social and economic justice.

role of international law in maintaining the peace over a significant period of time, even if such an order, subject to the realities of power politics, may eventually break down if the power imbalance between states becomes too great, and the temptations of empire, and resistance to empire too strong. Strauss also asserts the humanizing role of international law in dark or extreme situations. But, again, unlike the rather polarized perspectives in contemporary debate, he asserts both the importance of legal restraint, but also how problematic it is to operate effectively such restraint, given the exigencies of war.

If Strauss's motivations for rejecting the world state have nothing to do with an attachment to a warrior ethics demanding the permanence of violent conflict between states, nevertheless passages in Strauss's later writings appear to endorse — or present the 'classic' perspective as endorsing — a liberation from normative constraints in dealing with the enemy. The difference with Schmitt is that the endorsement by the classics is quiet, somewhat ashamed, and reluctant, rather than loud, enthusiastic, and unhesitating. But are these merely differences of tone or do they point to differences of substance?

Consider the following statements in *Natural Right and History*: 'not even despotic rule is per se against nature'; 'No law, and hence no constitution, can be the fundamental political fact, because all laws depend on human beings'; 'Let us call an extreme situation a situation in which the very existence or independence of a society is at stake'; 'societies are not only threatened from without. Considerations that apply to foreign enemies may well apply to subversive elements within society'; 'it is not possible to define precisely what constitutes an extreme situation in contradistinction to a normal situation. Every dangerous external and internal enemy is inventive to the extent that he is capable of transforming what, on the basis of previous experience, could reasonably be regarded as a normal situation into an extreme situation'; and, most importantly:

A decent society will not go to war except for a just cause. But what it will do during a war will depend to a certain extent on what the enemy — possibly an absolutely unscrupulous and savage enemy — forces it to do. There are no limits which can be defined in advance, there are no assignable limits to what might become just reprisals (Strauss, 1953: 160).

One need not be pre-disposed against Strauss and Straussians to read these passages and see a link between the teachings of Strauss and the abuses at Abu Ghraib. The idea that the inventiveness and cruelty of the enemy simply does not permit the definition of *any* limits in advance to how one may justly respond seems, at first glance, fatal to the laws of war. Moreover, while Strauss limits the applicability of this observation to the 'extreme situation' he appears to agree with Schmitt that one cannot determine in advance, by rules, what is an 'extreme situation' and therefore one

cannot insure by the rule of law or laws that normative constraints are only jettisoned in a *genuine* 'extreme situation', i.e., where the self-preservation of a society justifies actions that would otherwise be contrary to natural justice.

On a closer examination, however, a different possibility emerges. In speaking of the impossibility of defining limits in advance, it turns out that Strauss is referring to the kind of limits that are stated as absolute rules that permit of no exception. These rules do not allow for any discretion, or the balancing of military necessity for instance against humanitarian imperatives in the battleground. Yet many of the rules of international law, including the laws of war, are expressed precisely in terms that require such balancing by the commanders in the field. Concepts such as proportionality and necessity are crucial to the operation of these laws; and what is legal can only be assessed based on the facts as they are known to those who have to make the decision on the ground at a given moment. Ken Anderson notes, with respect to the fundamental norm of minimizing collateral damage to civilians:

Every day, every night, Air Force lawyers and planners must consider possible targets and weigh what they think the military value might be, in the future course of war, against the best intelligence data on how many civilians might be killed or injured, or how much civilian property destroyed. It is a thankless game of guesswork. By their nature, such judgments involve factual evaluations and guesses that cannot be legally challenged, unless something approximating willful, intentional gross negligence can be shown (Anderson, 2003).

For Strauss the difficulty of making such tradeoffs on the ground on a case by case basis does not imply that 'in war law is silent' or that those who make the decisions must be given the benefit of the doubt. On the contrary, just because the decisions in question cannot be pre-determined by general rules, but require situational judgment, in no way excuses those who make the decisions from *ex post* accountability: 'the objective discrimination between extreme actions which were just and extreme actions which were unjust is one of the noblest duties of the historian' (Strauss, 1953: 161). If 'objective discrimination' of this kind is possible for the historian, it is *a fortiori* possible for independent tribunals and commissions, with their power to collect evidence and summon witnesses.

This being said, could the various legal positions taken by the Bush Administration on the laws of war and related restraints be rationalized on the basis of what Strauss describes as the flexibility needed to respond on the spot to an enemy that is not only 'savagely' and 'unscrupulous' but also 'inventive' – for example, able to exploit existing legal constraints to its advantage by using 'human shields'? Neither friends nor critics of the Bush Administration will like what I would consider the approach to this problem that is most in keeping with the spirit, and letter, of Strauss's

thought. In the Straussian approach, in considering the loosening of legal constraints in time of war, one would need to consider the character of those making the decisions. Are the individuals in question likely to be overly cautious and be easily exploited or tricked by the enemy, if they do not feel a freer hand? Or are they persons of a character such that they would see such a casual or permissive view of legal constraint as a mandate, to use a line from a Cole Porter song, 'to take the brakes off' and 'misbehave'? What happened at Abu Ghraib suggests that what was fatal to humanity was a combination of a casual or permissive view of legal constraints with inattention or even wilful reckless disregard to the character and education of those in charge.

Strauss does not provide an answer as to whether in principle it is better to have absolute rules — 'torture is never permitted' — which in an extreme situation may be violated but with the possibility of the violator being 'excused' *ex post* or not prosecuted, based on the extreme or exceptional nature of the circumstances, or on the other hand flexible rules that can be manipulated and adjusted in light of the situation. Much may depend on what we assume about human character in extreme situations, and tractability of that character to education and training.

Thucydides and Democratic Imperialism

It is above all to Thucydides that Strauss turns when he seeks to examine the question of human character in extreme situations.⁷ Since Thucydides' account of the Peloponnesian Wars directly engages the question of justice and power in international relations, and the role of interest vs. principle in decisions of war and peace, it is no wonder that the Straussian view of Thucydides should play a prominent role in the debate over whether Straussianism is the intellectual cause of the Iraq war. According to Anne Norton the predominant Straussian reading of Thucydides has changed over time from an interpretation that presents Athens' downfall as a rightful punishment for its hubristic imperial ambition (a 'pro-Spartan' reading) to a reading that suggests, instead, that the Athenians failed because they did not pursue imperial war boldly enough, giving too much not too little slack to the reckless Alcibiades (Norton, 2004: 200). The Athenian people proved too fickle and fearful to allow their leaders to pursue intransigently the strategy implied by the speech and conduct of the Athenian generals on Melos — the natural right of the stronger, or the proposition that there is no justice between the weak and the strong. Though there are a number of allusions in her book to the Straussian interest in Thucydides, Norton never actually considers what Strauss himself had to

7 'On Thucydides' War of the Peloponnesians and the Athenians', in Strauss (1964).

say about the readings of Thucydides in question, though she seems to view the neocon reading as Strauss's own interpretation.

Before proceeding to consider Thucydides' teaching, Strauss makes the observation that: 'Today, not a few people believe that Thucydides, far from being opposed to democracy, was in sympathy with the imperialism that went with Athenian democracy or that he believed in "power politics"; accordingly, they hold that Thucydides' comprehensive view is stated by the Athenians in their dialogue with the Melians' (Strauss, 1964: 145).⁸ In response to the Melians' claim that having submit to Athens as a colony is an injustice, the Athenian generals state that there is no justice between the weak and the strong: the strong take what they can and the weak bear what they must. This is an iron law of politics — the generals dare to suggest that even the gods, the divine, support the right of the strong to aggress and to dominate. The Melians fail to yield to the Athenian demands, and in the result the male population is killed and the women and children enslaved.

Strauss observes that Thucydides' silence concerning his own judgment of the Athenian position on Melos can no more be read as an endorsement of that position than as a rejection of it. He notes that 'perceptive' contemporary interpreters of Thucydides observe the presence in Thucydides' work of that which transcends power politics, which Strauss calls 'the humane'. The question then is how Thucydides' teaching reconciles or balances the 'power-political' and the 'humane'. On one view, Thucydides' judgment of Athens's bold, 'power political' imperialism, and its claimed 'right' of the powerful as expressed on Melos, is contained in his narrative of the disastrous fate that Athens suffered with the plague and the Sicilian Expedition:

The city can disregard the divine law; it can become guilty of hubris by deed and by speech; the Funeral Speech [of Pericles] is followed by the plague and the dialogue with the Melians is followed by the disaster on Sicily. This would seem to be the most comprehensive judgment which Thucydides silently conveys (Strauss, 1964: 153).

Thucydides prefers Spartan moderation and caution to Athenian ambition and daring. He is a critic of Athenian imperialism and a severe critic of the Athenian claim to unlimited or unrestrained imperial expansion. Such is the view of Thucydides that Anne Norton claims was passed down by her Straussian teachers at Chicago, presumably in Strauss's name — only eventually to be usurped by a different, neocon Straussian teaching, according to which Athens's failures can be attributed, on the contrary, to the inability to pursue its imperial project with enough boldness and resolve, Athenian democracy precluding the strong authoritarian leadership required for victory in war (Norton, 2004). Norton, while in some

8 The Melos episode can be found in Thucydides at 5.84–116.

respects exonerating Strauss himself for the effects of Straussianism, suggests that when it comes to Thucydides, the neocon teaching is in the Straussian original:

Neoconservative foreign policy begins, for [Irving] Kristol, with Thucydides as Leo Strauss and Donald Kagan taught him. Read the theses that Kristol marks as central to American neoconservatism: patriotism, zealously cultivated; a fear of world government and the international institutions that might lead to it; and finally, and most revealing, the ability 'to distinguish friends from enemies' (Norton, 2004: 178-9, emphasis added).⁹

True, Strauss's Thucydides rejects, as do the Athenian generals on Melos, the notion of divine law guaranteeing of the triumph of the just and legal over the unjust and lawless; but this rejection is not a rejection of the meaningfulness of moral and legal standards in war and empire. These standards come not from 'divine law' but are instead a matter of the human or the humane; lacking the guarantee that comes from divine providence, the humane necessarily has a certain fragility and contingency. At the same time, justice from humanity has a superior nobility to justice that is practiced from fear of punishment, which is the typically Spartan kind of justice. Justice from humanity, as Strauss puts it so eloquently, comes from the gentleness and generosity of the soul (Strauss, 1964: 217). In the case of Sparta, fear of divine punishment did not prevent the Spartans from (in their own interpretation) breaking the peace treaty; it simply meant that, having (again, in their own eyes) broken the treaty, the Spartans were timorous in pursuing the war in its first phase, lacking confidence in their cause. If there were moments where humanity gave way to anger, hatred and brutality among the Athenians, it is also true that according to Thucydides, the Spartan sense of divine restraint did not prevent the Spartans themselves from committing atrocities when it was in their self-interest to do so (Strauss, 1964: 216-7). Far from seeing the necessities of war as licence for all manner of inhumane conduct, Strauss echoes and indeed magnifies Thucydides' moral judgment: referring to Thucydides' account of the massacre of Mycalessus Strauss uses expressions such as 'murderous savagery' and 'senseless slaughter of women, children and beasts'. Such language would be altogether unwarranted if the situation of war entailed the wholesale *suspension* of moral choice and moral judgment.

⁹ Norton further does not believe that these ideas can be gleaned from a correct reading of Thucydides. See Kristol (2003) 'The favorite neoconservative text on foreign affairs, thanks to professors Leo Strauss of Chicago and Donald Kagan of Yale, is Thucydides on the Peloponnesian War'.

International Law

The relevance of international law is where Strauss's judgment of the 'power political' implications of Thucydides differs most clearly from that of the neocons, and indeed from *all* 'realist' theorists of international relations. Strauss defends the relevance of international law as an important factor in maintaining peace. In a brilliant stroke he explains exactly why the principle enunciated by the Athenians on Melos is consistent with an important role for international law: the right to limitless imperial expansion is 'perfectly compatible' with 'fidelity to covenants': 'it is only incompatible with covenants that would limit a city's aspirations for all future times; but such were not the covenants with which Thucydides had seriously to be concerned' (Strauss, 1964: 191). This statement echoes Strauss's rejection of the ambition of post World War II international law to outlaw war forever, a rejection clearly stated in the preface of *The City and Man*. International law does not have a solution to the factual inequality, the relative power of states — the Athenians on Melos are correct to that extent. At the same time as the necessarily hegemonic striving of a superior power cannot be fully checked by international law, Strauss states that international law — in particular, peace treaties — were essential to Greek civilization and may be essential for the development or progress of any civilization. To understand the position that international law is necessary to civilization, yet insufficient to save civilization from war and indeed from reversion to barbarism, we need to examine Strauss's articulation of the theory of history that Thucydides sketches in the 'archaeology' that introduces Thucydides' account of the Peloponnesian War, and to which Thucydides averts in many subtle ways throughout the book.

This theory of history is based upon the interplay of 'rest' and 'motion'. In order for civilization to develop out of barbarism, out of a primitive state where there are no arts and sciences, nothing of refined beauty in human life, one needs long periods of 'rest' where there is an absence of generalized insecurity or conflict. Even imperial ambition itself only develops on the basis of 'rest' that brings into being civilization. But civilization is inherently unstable; it is not the product just of 'rest' but of a certain interplay of 'rest' and 'motion'; civilization imposes its own kind of violence (this Foucauldian/Freudian insight is teased by Strauss out of the speaker in Thucydides with whom he most identifies, Diodotus).

Civilization is inherently destabilizing, or self-destabilizing — in the long term. Yet while it lasts it is responsible for the goods that make human life worth living: freedom, beauty, and philosophy. International law helps it last, by constraining aggression and conduct that could provoke aggression. Since even a hegemonic power needs 'rest' and cannot sustain its own strength and greatness under conditions of constant inse-

curity and conflict, even a hegemonic power has good reason to accept the rule of international law, at least most of the time. Strauss puts it this way:

Neither rest and Greekness nor even war is possible without treaties among cities, and the treaties would not be worth keeping in mind if the partners could not be presumed to keep them; this presumption must at least partly be based on past performance, i.e. on the justice of the parties. To that extent, fidelity to covenants may be said to be by nature right (Strauss, 1964: 178–9).

Judging the Project of Democratic Imperialism

As we have noted, in his remarks on the Melian dialogue, Strauss made the extraordinary observation that imperial ambition, even if not intrinsically limited or bounded, may still be compatible with respect for treaties. Acceptance of the compulsion to empire or domination by the powerful as a universal rule of state behaviour does not lead to the conclusion that such behaviour cannot or should not be held in check by law. The question is in the name of what, and through what counterweights, it should be held in check.

We must begin from Strauss's own suggestion that there is at least one kind of legal justice that is possible between weak and strong states, and that is the respect for treaty norms. This means that treaty norms do not necessarily respect or require the equal right of all states to self-determination. And in fact the 'thirty-year' treaty did limit this right in the name of stability, by constraining the capacity of allies of one or other of the imperial powers to switch their allegiances. But, in the long run, according to Strauss no system of international law can itself be stable, if it does not fulfil the principle of legal equality among states: this is because the longing for freedom from external domination, the anticolonial impulse, is as permanent and inexorable a principle of state behaviour as the impulse to empire and domination (Strauss, 1964: 239). A system of law that stabilizes the balance of power between the strong, hegemonic states through consecrating the *status quo ante*, the existing division of the world between hegemonic states, will never appear legitimate to the colonized.¹⁰

If the natural or inexorable longing for self-determination creates a tension between imperialism and international law (a tension that can be managed, however, for long periods of time even, but not permanently resolved), it equally creates a tension between imperialism and democracy. According to Strauss, 'the Athenian democracy was a special kind of democracy, an imperial democracy exercising quasi-tyrannical rule over others' (Strauss, 1964: 169). Can the *internal* principles of democracy, freedom and equality be made compatible with imperial (i.e., undemocratic)

10 This notion of international law as entrenching the division of the world between *Grossraume* was advocated by none other than Carl Schmitt in his post-World-War II work *Nomos der Erde*. See Howse (2006).

rule over others — rule which denies equality and freedom as principles of *interstate* relations? Is it possible that democracy has to be sacrificed to empire or *vice versa*? As Strauss explicitly notes, the incompatibility of democracy with empire is raised in Thucydides by Cleon, a notoriously violent Athenian demagogue who aims at preserving empire and who has contempt for democracy.

Central to this problem is what Strauss sees in Thucydides as the impossibility of solving the tension between the internal values of democracy and empire through deception — exactly the contrary understanding to that of Strauss's critics. This emerges in the debate in the Athenian assembly over the fate of the Mytileneans,¹¹ a colony that has revolted against Athens. Once the revolt is put down, the Athenian assembly votes to punish Mytilene by putting to death all the adult men and enslaving the women and children. However, there are second thoughts as to the humanity of this harsh sentence, and the matter is put again to the assembly. The alternative is to punish only the leaders of the revolt, not the people, who quickly surrendered to Athens.

Thucydides presents the chief speakers before the assembly as the 'violent' (hawkish) Cleon and the gentle and philosophical Diodotus. Cleon tells the assembly that it should distrust eloquent speakers and hold true to its first instincts of vengefulness. Diodotus counters that the effect of this kind of distrust (sowed by demagogues such as Cleon), is that even good, i.e., publicly interested leaders, will be required to deceive the assembly. But Strauss indicates why Diodotus's suggestion cannot *solve* the problem of distrust:

[Diodotus] simultaneously indicates the fact that citizens who are not wise cannot distinguish between good and bad advice but must identify good advice with advice convincing them or appealing to them, and leaves in the ark the fact that a speaker whose proposals are frequently approved by the assembly cannot fail to be regarded as wise and hence to gain prestige (Strauss, 1964: 232).

In other words, there is no reason to believe that the lies of the good and wise would be any more likely to persuade the assembly than the lies of successful demagogues like Cleon. To lie more effectively than the unwise, or to overcome the distrust of the people, the wise would have to appeal more effectively than the unwise to the emotions of the people; there is no reason to think this is likely to be the case, and many reasons to believe the opposite.

It is true that Diodotus, who Strauss suggests is 'wise', is credited with Strauss with a subterfuge in his own argument in favour of saving the Mytileneans. Diodotus claims that the assembly should view the issue of punishing the Mytileneans only from the perspective of Athens's

11 This is found in Thucydides at 3.36–49.

self-interest not that of justice. Diodotus pretends to be more hawkish than even Cleon, or more hardheaded at least. Diodotus argues that killing the entire Mytilenean population will not deter rebellion in the future, because it is in the nature of human beings to rebel against domination. At the same time, it will give people who rebel every incentive to hold out until the bitter end, since they know that failure means certain death. Diodotus suggests that by punishing only the leaders and sparing the people Athens will make it easier to quell rebellions in the future, by giving the people an incentive to break with the leadership when things are not going to well (i.e., the people will assume that if they surrender they will be spared). The subterfuge is this: in fact, the considerations that Diodotus adduces, namely that rebellion is a natural and inexorable compulsion and the distinction between those who rebel and fight to the end and those who rebel but then repent and surrender, mitigate the guilt of all the Mytileneans and certainly remove the guilt of the majority of the Mytileneans. Therefore, according to Strauss, while purporting to appeal only to Athenian self-interest, Diodotus also appeals to justice. But if Diodotus were to appeal explicitly to considerations of justice, or pity or compassion for the involuntary element in revolt, rather than to hard-headed national interest, he would not be trusted by the assembly.

On the one hand, the Athenians decide to save the Mytileneans. On the other hand, Strauss does not tell us that Diodotus's subterfuge was the key factor in the assembly's gentler verdict. And even if the wise Diodotus's strategy of subterfuge was successful in this case, Strauss's pointing to this subterfuge does not diminish his suggestion that in general the preparedness of the wise to lie to the assembly will not solve the problem of democratic distrust. Cleon was an influential figure in Athenian foreign policy; Diodotus's sole appearance in Thucydides is on behalf of the Mytileneans.

Strauss claims that Thucydides puts more of himself into Diodotus than into any other speaker. It is Diodotus who states clearly that freedom from foreign domination *and* empire are the 'greatest things' (Strauss, 1964: 239). The normative implications of the power political dimension in Thucydides must be drawn from this duality, or dichotomy: the impulse to dominate by the strong is no more natural or less than the impulse of the weak to resist domination. Therefore, the recognition of the impulse to dominate by the strong does *not* imply the natural *right* of the strong to empire or domination. The resistance to the domination of the strong by the weak cannot be dismissed or despised in Nietzschean fashion as *ressentiment* or 'slave morality', if freedom from domination is among the greatest things, and as great as empire itself.

Conclusion

At the end of the Cold War, some conservatives imagined the possibility that America's military supremacy could afford it a utopian isolation from the troubles of the world: a foreign policy of independence, not interdependence, certainly not the kind of interdependence that involves international law and multilateral institutions. The lesson that Strauss draws from Thucydides suggests that such a hope was always a delusion. America's might would necessarily provoke resistance, for supreme power leads to (not unreasonable) fear that power will be used for domination and since rebellion against or resistance to domination is natural, no power, however apparently supreme, obviates the need for interdependence, the need to be fully engaged in the world. A foreign policy bent on maximizing autarchy is fruitless. On the other hand, an international order characterized by treaties of peace and norms of cooperation can, for periods of time, succeed in stabilizing or moderating hegemonic ambition, even the frankly limitless ambition of a power like imperial Athens, at least when it is backed by some kind of rough power balance or deterrent sanctions, or a sense of mutual interest in preserving for a period of time a state of 'rest'. Moreover, even when in the service of a global common good, or the right cause, the exercise of power by the powerful is likely to be resisted by the less powerful: one should not have expected the Iraqis to have cheered when they were liberated from Saddam Hussein's brutal tyranny, because the liberation came from outside, it was an exercise of *foreign* power.

In as much as he rejected or put into doubt some of the fondest, progressive hopes of liberal cosmopolitans — for the abolition of war and of persecution for all times — Strauss could be described as a conservative. Strauss could be understood as providing a warning and caution to those wanting to preserve humanity about the fragility and vulnerability of peace, order and justice. But the emphasis on the limits and vulnerabilities of liberal political order and the rule of law could be abused by those with anti-liberal belligerent intent. Strauss encouraged hard and bold thinking about the extremes, and human dilemmas in extreme situations. He did so in full recognition of the danger that hard and bold thinking might be misused. Did Strauss himself violate what appears to be his counsel of caution to public intellectuals, to philosophers, albeit a counsel wrongly understood as an endorsement of deception in the service of political power rather than to prevent its abuse of ideas?

Strauss wrote of Nietzsche whose thought had been distorted and used for their own purposes by the Nazis, that he was not guilty of fascism, but not entirely innocent of the misuse of his ideas. As he explained in his essay 'What is Political Philosophy?':

'[Nietzsche] used much of his unsurpassable and inexhaustible power of passionate and fascinating speech for making his readers loath, not only socialism and communism, but conservatism, nationalism and democracy as well. After having taken on himself this great political responsibility, he could not show his readers a way toward political responsibility. He left them no choice except that been irresponsible indifference to politics and irresponsible political options (Strauss, 1959: 55).

While Strauss did not use his own passionate and fascinating speech to breed contempt for democracy, for peace and for law, he did expose or highlight with great virtuosity the limits, internal tensions, and vulnerabilities of responsible political options. He held that what was most admirable in man, the capacity for thoughtfulness and urbane civil life, was at the same time fragile and permanently exposed to the danger of destruction or even self-destruction. Someone of Strauss's obvious seriousness and experience as a young Jewish thinker witnessing the destruction of German culture and its fall into genocidal anti-Semitism, could talk about these grave matters with a spirit of intellectual openness and frankness, without one would think any reason for suspicion of actually sympathy for the forces of darkness. But was it unpredictable or unpreventable that such discussion might attract students of a very different character and with very different motivations – and find its way into public discourse serving opposite purposes to those intended?

That the way thinkers and scholars express themselves has political and social consequences for which they must expect to be accountable was one of Strauss's most important teachings. However we judge Strauss himself, the importance of such accountability should be evident to us all in the legal academy after the sorry spectacle of the torture memos.

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