

‘Philosophy, Policy and Heritage’

Tel Aviv University

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Abstracts

‘Cultural Heritage and the Laws of War: Key Dilemmas’

Eliav Lieblich (Tel Aviv)

Everybody agrees that cultural heritage should be protected in war. Yet, the protection of cultural heritage raises immensely complex questions in the ethics of war. For instance, how do we identify cultural heritage worthy of protection? Should the standard be objective or subjective? Assuming that we know what protection-worthy cultural heritage is, how do we weigh its importance versus other values? This general question is relevant to both the resort to war (*jus ad bellum*), and its conduct (*jus in bello*).

Concerning the former, is an attack on a cultural object itself a just cause for war, either by the territorial state or the international community ("cultural intervention," if you will)? If so, under what circumstances would a forcible response to such an attack be proportionate? Regarding the conduct of war, the questions are manifold. Must belligerents refrain from inflicting incidental harm on a cultural object even if it is unavoidable in order to save lives? And on the flipside, does the protection of a cultural object count as an important enough good, that would justify incidentally harming persons when defending it? Significantly, does harming a cultural object render a non-combatant liable to killing in war?

The laws of war, comprising the law on the use of force and international humanitarian law, don't address most of these questions directly. However, in some cases, there is ample space for interpretation, which can be affected, to some extent, by what we perceive as morally desirable. In my talk I will therefore outline the key dilemmas concerning the protection of cultural heritage in positive law, and how these relate to some of the moral questions outlined above. As we shall see, the dearth of the legal discourse on the relative value of cultural objects calls for a deep engagement between international lawyers and philosophers.

‘Genocide and Cultural Restitution: A Challenge for International Law’

Leora Bilsky (Tel Aviv)

Cultural restitution in international law typically aims to restore cultural property to the state of origin. The experience of WWII confronted the world with the need to adapt this framework to deal with a state which persecuted cultural groups within its own borders. The persecution of Jews and the attack on their cultural heritage began by the Nazi State before the war, and it was carried systematically throughout the war in conquered territories.

Since then, international law developed two main approaches to cultural restitution: "world heritage" and "protection of indigenous cultures." However, both approaches raise their own set of problems, as they reflect Western assumptions about private property and a colonial bias in the protection of cultural heritage within a state. In this talk I discuss an alternative approach to cultural restitution developed by



Jewish jurists and scholars in the late 1940s and 1950s, wherein heirless cultural property was returned to Jewish organizations as trustees for the Jewish people. Though largely forgotten, this approach offers a promising model for international law.

'Why Philosophers Should Forget about Philosophy When they Talk to Officers about Ethics in War'

Daniel Statman (Haifa)

My presentation is divided into two parts. In the first, I talk about the tension between the two different hats donned by philosophers, one when they reflect philosophically on the ethics of war and the other which they are expected to wear when they address people in the military on ethical aspects of their profession and activities. In the second part, I cast doubt on the educational value of philosophical discussion, particularly in the field of military ethics, and propose that what commanders need most is not philosophical enlightenment but practical advice on the best pedagogy designed/available to improve the ethical behavior of their units.

'Political Philosophy and Philosophical Politics'

Idit Shafran Gittleman (Israel Democracy Institute)

As every scholar knows, a gap exists between academic research and its application; between theoretical exploration and studies that aim to have an impact on reality. The work of a philosopher at a policy aimed think-tank accentuates this tension: on the one hand, the philosophical exploration, its aims and methodology are the tool; on the other hand in an institute whose goal is to influence policy, legislation and public opinion, a research without significant practical recommendations is unlikely to even be approved at the institution's board.

Another challenge for using philosophical discussion in the work of think tanks is the requirement that the studies and reports be accessible to readers who are not philosophers, and prefer short and simple documents over detailed and long ones.

But the great challenge to be met by those who seek to derive practical recommendations from philosophical research lies in the gap between what is right and what is politically wise (and feasible). And the tension between what is morally correct and what is the right recommendation is even more acute when it comes to issues related to security. If researchers want their reports to be taken seriously, they must preempt accusations according to which their recommendations, given from the comfort of the armchair, are irrelevant since things look different when they get dirty in the dust of battle.

Working at a think tank therefore requires a delicate balance between these two ends. If one's aim is influencing policy, and making a real difference in reality, research that remains unread and unused cannot be justified. In order to achieve this goal, pragmatic considerations must sometimes overshadow what appears to be pure justice: an achievable second best is preferable to an impossible moral goal; unholy coalitions might be advisable, and compromise is mandated.

This may come as a disappointment to the philosopher, who must somewhat relax some of her commitments to philosophical precision and to moral purity. The good news, however, is that when successful, the work of a philosopher at a think tank sometimes leads to practical achievements, and morally desirable policy.



“The Soldier as the Audience: Between Theory and Practice’

Moshe Halbertal Hebrew University, Jerusalem and NYU

Laws of war can have diverse audiences - students and professors of ethics and law (this is the group that most academic authors write to), judges and lawyers. Yet the prime audience for such body of law and ethical principles ought to be the armed forces, soldiers and officers. What does it mean both in content and in ways of teaching when we focus on the audience which actually engages in the use of force. My lecture will touch upon this question.