Law Beyond Borders: Universal Jurisdiction Between Moral Necessity and Legal Legitimacy

Introduction

In the wake of atrocities such as genocide, state sponsored tortures, and crimes against humanity, the notion that any nation may prosecute certain offenses in the form of universal jurisdiction, raises the question; can moral outrage solely justify legal authority beyond sovereign borders? In the aftermath of the Holocaust, the Nuremberg Trials set a lasting precedent by declaring that "crimes against humanity" transcend national boundaries. The tribunal's famous assertion that individuals cannot hide behind the authority of their states signaled the beginning of a new era in international criminal law. Similar reasoning reappeared in the tribunals for Rwanda and the former Yugoslavia and in the creation of the International Criminal Court. However, these institutions reveal both the promise and fragility of global justice; while they affirm humanity's shared moral responsibility, they also depend entirely on the political will of sovereign states. The result is a legal landscape caught between aspiration and consent. Philosophers of law have long recognized that this tension between moral universality and sovereign autonomy raises a deeper question. Essentially it is the question of whether or not law can serve humanity without undermining the very structure of legality that makes it possible? Hence, this essay argues that universal jurisdiction can be justified only when grounded in the political and moral conditions of state legitimacy, as Hugo Grotius conceived in natural law terms and as Win Chiat Lee reformulates in contemporary legal philosophical terms. H. L. A. Hart's positivism, by contrast, exposes the institutional fragility of such authority. Through the comparison of Hart's skepticism, Grotius's moral cosmopolitanism, and Lee's procedural-legitimacy account, I contend that universal jurisdiction is morally legitimate yet

legally precarious; it is warranted when a state's failure of authority compels others to act in defense of humanity itself.

The Structural Challenge: Law, Morality, and the Limits of Sovereignty

Legal positivism provides the first obstacle to any claim of universal authority. H. L. A. Hart maintains that genuine legal systems require certain laws. These are the existence of primary rules which are obligations, and secondary rules which determine how laws are changed, recognized, and enforced. International law in his words "resembles…an elementary form of law", because it lacks the mentioned secondary features (Readings in the Philosophy of Law 220). The rules which constitute international law are more or less rules of obligation observed by states. However, in no way or form include a global rule of recognition or centralized authority, due to which they are not binding statutes.

In "Positivism and Separation of Law and Morals," Hart insists that "the law is one thing; its merit or demerit is another (611). Legal validity derives from social sources and not moral worth. From this perspective, claims of universal authority collapses the distinction between what is law and what ought to be law. A state asserting universal jurisdiction appears to legislate morally, not legally. Hart would hence argue that moral condemnation, whichever way justified, "substitutes the moral ideal of a world community for the actual reality of separate states" (Concept of Law 223).

Yet Hart's critique, while structurally incisive, leaves behind unaccounted for and unanswered on what happens if the law must be authorized by the very institutions that commit atrocities, and what recourse remains for victims when legality protects the wrongdoers? Hart's

theory clarifies the structure law must have, however it struggles to explain law's purpose when that structure collapses.

The Moral standpoint: Law as a Universal Human Obligation

To answer that very gap, modern jurisprudence can look back to the natural-law tradition. About almost three centuries ago, Hugo Grotius grounded law in reason itself. He deemed, "even the will of an entire people cannot make what is intrinsically unjust become just," (Readings 202). For Grotius, natural law binds all rational beings, and certain acts such as slavery, murder or genocide violates that universal moral order. Essentially these are acts that are wrong everywhere and always, and because such acts "affect the whole human race" any state may act against them.

Thus Grotius provides the first philosophical basis for universal jurisdiction. This entails that some wrongs are crimes against humanity and not just merely against any particular state. Grotius's influence extends deep into modern legal and political thought. Many enlightenment thinkers, as such Locke and Kant, built their theories on his belief that moral law exists before and above government power. Locke's idea of natural rights and the modern system of human rights are shown in documents such as the Genocide Convention and the Universal Declaration of Human Rights, come directly from Grotius's view that justice is rooted not in consent but in morality. Regardless, Grotius was very optimistic about human reason, and that optimism has limits. He assumed that people and nations could agree on what is morally right, but history shows that they often do not. Countries have different values, cultures, power, and interests, which makes "universal" morality difficult to define.

However, in contrast to this, Hart would criticize this by saying that the sheer basis of something's morality is not enough to make it a real law. Moral ideas can easily turn into personal opinions or emotional reactions in Hart's words "discretionary zeal" instead of consistent justice, without the existence of proper institutional mechanisms such as courts, rules or procedures. Therefore, the challenge for contemporary theory is how to preserve Grotius's moral universality while incorporating Hart's demand for procedural legitimacy. Essentially, a way in which one can make the law of humanity function as law, not merely as morality.

The Turning Point: When States Forfeit Legitimacy

In "International Crimes and Universal Jurisdiction" Win Chiat Lee offers a modern reconciliation by grounding universal jurisdiction in the conditions of legitimate authority rather than in abstract moral truth. He argues that "international crimes proper" occur when the state itself inflicts or tolerates "serious harm against its own citizens on its own territory" (28). In such cases, the state "forfeits its legitimacy authority" and thereby loses its exclusive right to prosecute (30). The international community's jurisdiction emerges from this forfeiture, not from a moral impulse to rule the world. Therefore, when the guardian becomes the offender and the right to prosecute passes outward to the international community.

Instead of appealing to a universal moral order, Lee's reasoning is functional and political. A state's central duty, he argues, is to protect its citizens from harm and to maintain lawful order within its territory. When that duty is abandoned, whether through active participation in atrocities or through deliberate inaction, the state forfeits its claim to exclusive jurisdiction. Therefore, international courts and other states may act as agents restoring the rule of law where it has collapsed. Hence not taking the role of moral intruders in any way or form.

Lee extends this reasoning to cases where the perpetrators are non-state actors, noting that even then, interventions may be justified if the government has proven incapable of enforcing the law (32-33). The right to prosecute therefore belongs to humanity only in a derivative sense, emerging from the vacuum left by a failed state.

This framework transforms universal jurisdiction from a sweeping moral ideal into a conditional legal principle. Sovereignty, on Lee's account, endures only as long as a government fulfills its foundational purpose of protection. The significance of this view lies in its restraint, that not every atrocity becomes an international crime, and not every moral outrage justifies global intervention. What essentially matters are the "conditions of legitimate authority" (36). This is the point at which a government's moral failure undermines its legal status. Genocide and similar crimes qualify as international crimes becasue they expose that failure in its most extreme form. Universal jurisdiction, then, is not a rejection of sovereignty but an acknowledgement that sovereignty itself depends on justice.

Legality Restored: Reconciling Moral Duty and Legal Form

Lee's legitimacy-based account transforms the tension between positivism and natural law into a productive balance. From Hart he retains the insistence that law must rest on legitimate procedures; from Grotius he preserves the intuition that justice transcends borders. His central innovation is the claim that sovereignty itself is conditional. "When a state has failed to meet some of these conditions," he observes, "one could argue that it is no longer entitled to the monopoly of the use of power"(31). The right to act, accordingly, "derives from a logically independent prior claim…that these crimes harm or set back the interests of humanity as a

whole" (35). Humanity, however, is not a new sovereign; its authority "belongs to everyone and every state both collectively and distributively because it belongs to no one in particular" (37).

Lee's conception parallels the emerging principle known as the Responsibility to Protect (R2P), adopted by the United Nations in 2005. R2P holds that sovereignty entails responsibility; in the sense that when a state fails to prevent or respond to mass atrocities, the international community bears a residual duty to intervene. This development signals a profound shift in how law understands political authority. Sovereignty is no longer viewed as absolute possession but as a conditional trust grounded in moral legitimacy. This can be described as where legal and moral norms begin to overlap beyond the confines of individual states. Lee's framework anticipates this evolution by giving philosophical coherence to what R2P expresses politically, which is that moral failure within a state can create legal obligations for others. The challenge is ensuring that such interventions preserve impartiality and due process rather than reproducing patterns of domination and power.

In this view, universal jurisdiction rescues legality rather than replacing it. It recognizes that sovereignty's moral foundation is inseparable from its legal one. When the two diverge, the moral dimension does not destroy law, it restores it by asserting law's purpose, which is the protection of persons from the abuse of power. Universal jurisdiction is an imperfect but necessary attempt to preserve and protect the rule of law where the ordinary sources of law have collapsed.

The Ongoing Risk: Between Moral Necessity and Political Abuse

Despite its moral appeal, universal jurisdiction carries an enduring risk that it can be exploited by powerful states to advance political interests under the guise of justice. The

selective enforcement of international criminal law has long revealed this vulnerability. The International Criminal Court has disproportionately targeted African leaders, prompting accusations from the African Union that the Court functions as a “tool of Western intervention.” Meanwhile, military and political figures from powerful nations, such as those involved in the 2003 Iraq War have remained beyond prosecution. Such asymmetry erodes faith in the universality of law and transforms a moral ideal into an instrument of geopolitical control.

From a philosophical point of view, this brings back Hart’s main concern that when there is no single rule that applies to everyone, the fairness of the law depends on who is enforcing it. If only some people are punished then international justice becomes a performance rather than a real legal system. Grotius’s belief in universal moral duty also faces problems here, because nations that claim to act for “humanity” often define morality in ways that reflect their own culture or political power. Lee’s idea of conditional sovereignty explains when other states can intervene, but it does not completely remove the danger that some countries will claim moral authority without truly earning it.

Due to these risks, universal jurisdiction must be utilised cautiously. Actions should be balanced, transparent, and based on cooperation among many nations, not led by one. Trials carried out by international courts, where different legal systems work together have more legitimacy. Even so, these institutions are not without bias or political limits. Universal jurisdiction should therefore be treated as a last resort, used only when national systems have completely failed and when the decision to intervene represents the shared moral voice of humanity, not the ambitions of a single state.

The Future of Global Legitimacy

For universal jurisdiction to promote justice rather than politics, it must evolve from a moral aspiration into a stable legal institution. The long standing debate between positivism and natural law shows that legitimacy requires both moral justification and procedural structure. The challenge now is practical in the sense to build structures capable of embodying both. Moving forth, to strengthen the International Criminal Court, and essentially ensure consistent enforcement with the establishment of a transparent criteria for intervention. Hence, all of which would help align moral conviction with legal certainty.

Nonetheless, significant challenges remain. International law depends on state cooperation, and many nations fear that global enforcement could erode their independence. This tension between moral duty and political interest is likely to persist. Yet universal jurisdiction continues to play a key moral role, even when imperfectly applied. It reminds the world that sovereignty is not an unconditional right but a responsibility grounded in justice. To ignore atrocities in the name of political caution weakens the legitimacy of all legal systems. The future of global justice may therefore depend not on eliminating this tension but on learning to navigate it, accepting that the pursuit of humanity's law will always involve a delicate balance between moral conviction and political reality.

Conclusion: Law's Moral Vocation

The debate over universal jurisdiction exposes law's dual character as both a system of rules and an instrument of moral responsibility. Hart clarifies the structure that gives law legitimacy; Grotius reminds us that legality without morality risks blindness; Lee unites them by tying sovereignty's legitimacy to its moral purpose. When a state commits or permits atrocities, it

abandons that purpose and forfeits its exclusive claim to justice. In such moments, the responsibility to act passes to the international community, not as an act of domination, but as the preservation of law's meaning itself.

The ultimate question is not whether universal jurisdiction is flawless but whether humanity can afford to live without it. In a world where governments can sanction mass murder under the banner of legality, neutrality becomes complicity. Law must therefore find the courage to extend its reach without losing its discipline. The ongoing task for philosophers, jurists, and policymakers alike is to refine this balance. Essentially to ensure that universal jurisdiction embodies both moral conscience and procedural integrity. That fragile equilibrium is precisely what keeps law from either becoming powerless morality or unprincipled force.

Universal jurisdiction understood in this way, is neither pure moralism nor naive legal optimism. It is the imperfect expression of law's highest calling; to protect the dignity of persons even when their own governments will not. As Lee concludes, "Fundamental normative issues about jurisdiction are the key to understanding the legitimacy of international criminal law" (37). The challenge ahead is to refine the institutions capable of exercising this authority fairly. The challenge ahead is to refine the institutions capable of exercising this authority fairly. To deny universal jurisdiction because of its imperfections would be to deny law's moral vocation altogether.

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