

of great importance. Such comparative analysis must not only study the non-Occidental systems in their purity, but also take into consideration the far-reaching influences exercised on non-Occidental systems by the civil and the common law. It must take into consideration that these non-Occidental states are striving, out of poverty and misery, for prosperity, for industrial progress, for effective government and higher living standards. In these respects they must look to the West; technical assistance has a very great rôle to play, if it is given with no idea of domination. This writer believes that the non-Occidental legal and value systems are different from, but not incompatible with, those of the Occidental culture of the free world. They threaten neither the existence nor the development of universal international law. But they cannot be ignored; for they certainly will make their influence felt on the contents of international law: they will play a rôle in the formation of customary international law, in the contents of treaty-created norms, in the "general principles of law, recognized by civilized nations" and in the development of the law of international organizations.

JOSEF L. KUNZ

THE REALIST THEORY IN PYRRHIC VICTORY

The new edition of Professor Morgenthau's well-known work on *Politics Among Nations*¹ merits brief editorial comment. It is designed, the Preface tells us, to take into account such recent "political experience" as "the emergence of new trends in the structure of world politics, the development of the colonial revolution, the establishment of supranational regional institutions, and the activities of the United Nations" (p. viii). The author introduces new concepts of "containment, cold war, uncommitted nations, and Point Four" and offers "elaboration, clarification, refinement, and change" of such earlier concepts as "political power, cultural imperialism, world public opinion, disarmament, collective security, and peaceful change," with application of these concepts "to the novel developments of recent years" (p. viii). In the faith that a "realist" theory of international politics has been "largely won," a new introductory chapter has been added for outlining the major tenets of this theory.

In basic structure of organization and in general orientation of thought, this edition of Professor Morgenthau's book remains, however, substantially the same as the earlier and is, accordingly, subject to both the same praise and the same criticism.² The exploratory map of world politics presented is still largely that of nation states, possessed of certain "elements" of power, pursuing through certain conflicting policies of "status

¹ Hans J. Morgenthau, *Politics Among Nations* (New York: Alfred A. Knopf, 2nd ed., revised and enlarged, 1954). pp. xxviii, 626. Appendix. Bibliography, Historical Glossary and Index. \$5.75.

² L. H. Woolsey, in reviewing the first edition, outlines the structure of the book and concludes that it "is the most incisive book of its kind that has come the way of this reviewer." 44 A.J.I.L. 221 (1950). Some criticism of basic assumptions is offered in McDougal, "Law and Power," 46 *ibid.* 102 (1952).

quo” and “imperialism” and under certain limitations—imposed by “the balance of power,” “international morality and world public opinion,” and “international law”—a national interest primarily defined in terms of power. The application of this map in the concluding chapters is still to the problem of “peace,” with contrasting appraisal of the potentialities of “international organization” and of a diplomacy of accommodation.

It would seem that international lawyers might reasonably ask of a comprehensive treatise on international politics the performance of two specific intellectual tasks: first, a description of world social and power processes sufficiently comprehensive and realistic to further the creative study of international law; and second, a reasonably accurate indication of the rôle that perspectives of “legitimacy” or of “authority,” that is, of “law,” play among other variables in affecting decisions in the world power process and its constituent power processes. The first of these is needed to enable international lawyers both to categorize the events, the interactions of claim and counterclaim, to which authoritative decision-makers respond in terms of facts rather than of legal technicalities, and to relate the flow of decisions actually made and the legal prescriptions invoked to basic world community and national policies. The second is needed to preclude either overestimation or underestimation of the rôle that perspectives of legitimacy and legal procedures have played, and can be made to play, in the promotion of community values and to assist in clarifying the details of a more effective international law. It is not believed that Professor Morgenthau’s book yet performs either of these tasks in the degree that the exigencies of our time require.

The outline of world social and power processes which Professor Morgenthau offers is much too limited. Though he recognizes both the increasing fractionalization of the nation state by functional groups such as general and special international governmental organizations, political parties, pressure groups, and private associations, and the accelerating emergence of large new regional bodies politic in the alliances of traditional nation states, his emphasis is still largely upon the nation state and, despite an excellent analysis of the bases of power of nation states, he offers no comprehensive framework of theory for describing the rôles of these various participants in world social and power processes in terms of their objectives, the arenas of their interactions, their bases of power, the practices by which they shape and share values, and the effects they achieve. Even with respect to the nation state, his focus is more upon the diplomatic, ideological, economic, and military instruments of attack and counterattack than upon the prescriptions and procedures, the perspectives and practices of “legitimacy,” by which nation states formulate and apply common policy for controlling and regulating their interactions. Indeed, though the guiding definition of power offered in this edition (p. 8) is somewhat broader than that of the earlier, one does not yet find a workable distinction, essential to any notion of law, between that power which is based upon effective control or force only, and that which is based upon expectations of community authority. In his over-all appraisal of the intensity of interactions across nation state boundaries, the author

would appear, further, greatly to minimize the degree to which today "community" or "society" is in fact trans-national.

The conception of law which infuses Professor Morgenthau's book is still too much that of a static body of rigid rules. Thus, he states that courts "decide disputes on the basis of the law as it is" (p. 402) and, being identified "with the status quo and the law representing it," have "no standard of judgment transcending the conflict between the defense of the status quo and the demand for change" (p. 405). He repeats: "Law in general, and especially international law, is primarily a static social force" (p. 83). An alternative conception, perhaps both more descriptive and more capable of rendering greater service to the idea of a world increasingly governed by law, is that of law as a whole decision-making process in which many different authoritative decision-makers, not merely judges, continually formulate and reformulate policy and respond in their decisions not merely to words describing what prior decision-makers have done in earlier contexts, but also to policies projecting desired consequences into living contexts. The little words "law as it is" completely confuse whether one is describing past decisions, predicting future decisions, or prescribing what future decisions ought to be. It is not "power politics" but simple rationality to interpret inherited rules not as autonomous absolutes but rather, flexibly, in terms of the fundamental community policies they are intended to serve in contemporary contexts. With such criteria of interpretation, and with specific decision-makers identified, one would not, for example, be confronted with such difficulties in the interpretation of fundamental charters, or in the definition of "aggression" and "self-defense," as bedevil Professor Morgenthau (pp. 259, 260). Law is not merely a "limitation" upon power but is also a conscious, creative instrument in promoting both order and other values.

It is not impossible that the principal difficulties in Professor Morgenthau's book stem from the "realist" attempt, so concisely and vigorously outlined in the new introductory chapter, to isolate "politics" as an "independent sphere of action and understanding" apart from other inter-related social processes. When power processes are considered as apart from the variables which affect the choices of particular decision-makers and from the consequences of particular decisions upon other value processes, the understanding even of power is likely to be minimal. Thus, not to include demands for and expectations of "legitimacy" among the most pervasive, dependable, and economical bases of power even in international politics is most unreal.³ The major fault we would find with Professor Morgenthau's analysis is, accordingly, not that he emphasizes power too much but that he doesn't emphasize certain forms of power enough. It would, however, be ungracious to conclude without thanking him for raising the discussion of his subject above the level of triviality and casting it somewhat under the guise of eternity.

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³ Cf. L. J. Halle, *Civilization and Foreign Policy* (reviewed *infra*, p. 433), Chs. VI and VII.