

Echoes of a Forgotten Past: Mid-Century Realism and the Legacy of International Law

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The Realist Case for Global Reform, William E. Scheuerman (Cambridge: Polity Press, 2011), 200 pp., \$69.95 cloth, \$26.95 paper.

John H. Herz: Leben und Denken zwischen Idealismus und Realismus, Deutschland und Amerika, Jana Puglierin (Berlin: Duncker & Humblot, 2011), 335 pp., €48 paper.

The Concept of the Political, Hans J. Morgenthau, edited by Hartmut Behr and Felix Rösch, translated by Maeva Vidal (Basingstoke, U.K.: Palgrave Macmillan, [1933] 2012), 176 pp., \$85 cloth, \$35 paper.¹

Those studying the work of Hans J. Morgenthau, widely considered the “founding father” of the Realist School of International Relations, have long been baffled by his views on world government and the attainment of a world state—views that, it would appear, are strikingly incompatible with the author’s realism. In a 1965 article in *World Politics*, James P. Speer II decided that it could only be “theoretical confusion” that explained why Morgenthau could on the one hand advocate a world state as ultimately necessary in his highly successful textbook, *Politics Among Nations*,² while writing elsewhere that world government could not resolve the conflict between the Soviet Union and the United States by peaceful means. According to Speer,

Morgenthau posits at the international level a super-Hobbesian predicament, in which the actors on the world scene are motivated by the lust for power, yet he proposes a gradualist Lockean solution whereby the international system will move, through a resurrected diplomacy, out of a precarious equilibrium of balance-of-power anarchy by a

“reevaluation of all values” into the “moral and political” bonds of world community, a process whose capstone will be the formal-legal institutions of world government.³

This oscillation between Hobbes and Locke, Speer asserted, must be the result of Morgenthau’s “commitment to the organismic mystique that comes out of German Romantic Nationalism,” although he admitted in a footnote that his reflections on the intellectual sources of Morgenthau’s theories were “mere speculation.”

Campbell Craig continued Speer’s line of thought by situating Morgenthau’s “paradoxical conceptions of the world state” within the context of the thermo-nuclear revolution in the late 1950s and early 1960s.⁴ Faced with the prospect of world annihilation through nuclear war, Craig argued, Morgenthau oscillated between description and prescription; between the observation that the attainment of a world state was unrealistic under current conditions and the belief that world government was the only thing that might prevent war between the superpowers: “The possibility of world government was so low and the risks of failure so high that the world state notion he put forward in *Politics Among Nations* was effectively speculation.”⁵ Paradoxically, according to Speer and Craig, Morgenthau nonetheless repeatedly argued that the standoff between the Soviet Union and the United States could not be resolved by peaceful means, but only through a hard-nosed, balance-of-power logic and aggressive militarization. Indeed, Morgenthau sharply criticized President Eisenhower’s war-averse policies of 1956–1959 on a number of occasions.

In his stimulating and thought-provoking monograph *The Realist Case for Global Reform*, William E. Scheuerman now returns to the reflections of mid-century realists on the prospects of world government and the attainment of a world state. Scheuerman convincingly argues that the thought of not just Morgenthau but also his fellow realists John H. Herz, Reinhold Niebuhr, Arnold Wolfers, Georg Schwarzenberger, Frederick Schuman, and E. H. Carr was perhaps not as theoretically confused, self-contradictory, or paradoxical as it tended to appear to many commentators. Instead, it was the result of a complex set of circumstances and German left-wing heritages that made these apparently “hard-nosed” realists reflect at length about the possibilities for global reform.

Echoing recent calls in the international relations literature to rehabilitate the rich thought of so-called classical realists, which more often than not has been reduced to a mere caricature in contradistinction to which contemporary theorists stake out their own terrain, Scheuerman coins the term “progressive realists.” The

label of classical realism, he argues, “lumps together a range of inconsonant thinkers in potentially misleading ways” (p. 7)—misleading, at least, for those interested in replenishing the stale debates of more recent (neo)conservative and (post-Waltzian) structural versions of realism. Scheurman claims that “by ignoring the rich intellectual heritage of its own reformist past, present-day Realism makes things too easy for itself” (p. 97) and that, in turn, cosmopolitans make it too easy for themselves by engaging with only a caricatured version of it (p. 98). And this reformist past, he convincingly demonstrates, is precisely the consequence of Morgenthau and others not shying away from reflecting on the world state in a way that, according to the standard textbook narrative, would seem rather at odds with the realism that is taught in the undergraduate classroom. Instead, progressive realists “offer a serious intellectual challenge,” not least by having “endorsed versions of both *moral* and *legal-political* universalism analogous to those advocated by present-day Cosmopolitan defenders of global reform” (p. 98; emphasis in the original).

What distinguishes Scheurman’s progressive realists as a group is, most important, their left-wing radicalism. Most of them had a German intellectual background, and many of them were German-Jewish émigré jurists who had been forced to switch disciplines in favor of International Relations in postwar America. All of them, including E. H. Carr in the United Kingdom, were very much at home in continental European debates in social and legal theory; and this intellectual heritage, while often overlooked by many of their Anglo-American readers, was always present in their writing. The common heritage is not Bismarckian Realpolitik but rather the (by no means internally consistent) thought of the likes of Hans Kelsen, Karl Mannheim, Gustav Radbruch, Paul Tillich, and Max Weber.

While Scheurman does not venture into these legal and social theoretical debates themselves to make his case, a short excursus on Morgenthau’s intellectual background may be illustrative here. For it was primarily the legal formalism of Hans Kelsen, and not, as is often claimed, the influence of Carl Schmitt, that had shaped Morgenthau’s perspective on law when he arrived in the United States in 1938. This is an observation that most international lawyers would readily acknowledge, but one that still does not resonate in international relations debates—to the detriment especially of those trying to make sense of the apparent “theoretical confusion” surrounding Morgenthau’s talk of the world state.

Morgenthau’s *Habilitation* manuscript in international law, the published version of which, *La réalité des normes*, appeared in 1934, constitutes a painstaking

(and perhaps only partially successful) attempt to save Kelsen's "immense theoretical progress" from the allegedly hollow conceptualizations of neo-Kantianism.⁶ Following the work of his mentor, the legal theorist Arthur Baumgarten, Morgenthau argued that Kelsen's theory occluded the reality of the "ought," the *Da-Sein* of the *Sollen*—that is, the social forces that are determinative of normativity itself. Without a consideration of this reality, legal theory would amount not so much to a *Rechtslehre* but rather a hollow *Rechtsleere*⁷—a formalism that Morgenthau would later go on to call "legalism" in his American writings, and that many of his readers would misinterpret as meaning that Morgenthau deemed international law to be irrelevant for the study and practice of foreign affairs.

Already long before formulating his controversial "pure theory of law," Kelsen had argued that it was methodological syncretism to try to blend legal with moral-political analysis.⁸ Legal science, he insisted, should be a purely normative discipline based on the notion of imputation (*Zurechnung*): to every (legal) norm is attached a coercive sanction that is the (legal) consequence of noncompliant behavior. This reasoning led Kelsen to elaborate his "identity thesis" (*Identitätsthese*), according to which the state and the law were one and the same. As a corollary, international and domestic law were also part of one and the same monistic system, based on the principle of delegation: every norm can be ascribed to another norm that is superordinate to it, with the delegated norm deriving its validity from the latter. The result is the hierarchical structure of norms (*Stufenbaulehre*) that Kelsen had borrowed from his colleague Adolf Julius Merkl, which culminates in the basic norm (*Grundnorm*) that represents a hypothetical fiction embodying the unity of the legal system.

From this perspective, and as Morgenthau would quite happily repeat in *Politics Among Nations*, international law was of a primitive type because it was decentralized with respect to its three basic functions of legislation, adjudication, and enforcement.⁹ Kelsen's monistic legal system left the nonlegal (that is, moral-political) choice between two epistemological hypotheses: either one considers state law to be the highest form of law or one takes international law to override it. Both Kelsen and Morgenthau would lean toward the latter. According to this logic, international law, just like domestic law, still constitutes an order of constraint, with each rule consisting of an illegal act (*Unrecht*) and a sanction (*Unrechtsfolge*).¹⁰ From this perspective, an international delinquency is only a special case of unlawful action because the holders of validity and the subjects of the international legal order are identical. In other words, the normative reality

of international law depends almost exclusively and most often directly on the will of states and their representatives, who are at the same time the subjects of international law.¹¹

Against the backdrop of Kelsen's monistic conception of a hierarchically structured, unified system of law—and once more following Baumgarten's lead—Morgenthau sought to save the theoretical idea of a world state from the charge of being utopian by decoupling the argumentative logic of striving for a holistic system of legal norms from the political project of making the world community into a unified state.¹² In *Politics Among Nations*, Morgenthau would write that

international peace through the transformation of the present society of sovereign nations into a world state is unattainable under the moral, social, and political conditions which prevail in the world in our time. If the world state is unattainable in our world, yet indispensable for the survival of that world, it is necessary to create the conditions under which it will not be impossible from the outset to establish a world state.¹³

For both Kelsen and Morgenthau, such organizations as the League of Nations and the United Nations did not necessarily constitute precursors to an eventual world state. Instead, they signified the establishment of conditions for world community under which the primacy of international law in a unified system of legal norms could effectively be pursued. Rather than constituting a practical motive for political decision-making, the world state was a potent theoretical construct for reflecting about global reform.

Of course, Kelsen is not by any means the only source for the progressive realists, nor should the immediate context of the 1940s and 1950s, particularly the thermonuclear revolution and the advent of the bipolar stalemate, be underestimated. But Scheuerman's call to recognize and examine the "messier and more interesting story" (p. 92) of this group of thinkers is well-taken. Indeed, it is a story that, as the preceding paragraphs demonstrated, needs to go beyond the comfort zone of contemporary international relations theory and back to the international legal and continental European social thought that is generally not part of the "disciplinary history" of the field. Expressed in Martti Koskenniemi's terminology of apology and utopia,¹⁴ progressive realists were acutely aware of the tensions between an apologist discourse that privileges the moral status of the state and a utopian internationalism that occludes the hegemonic aspirations

of states that are all too happy to uphold a legal formalism that can be used to depoliticize their ultimate claims to ideational supremacy. Arguably, the current discourse on “good governance” suffers from the same occluding dynamic; and Scheuerman’s claim that the neglected views of progressive realists “help identify the Achilles’ heel of the present-day preference for ‘global (democratic) governance without government’” (p. 137) is certainly pertinent. Indeed, all those interested in contemporary, “policy-driven” debates on global governance should read Scheuerman’s monograph.

REALIST LIBERALISM AND THE SECURITY DILEMMA

As Scheuerman points out, Kelsen’s legal formalism is also the specter haunting the work of another mid-century realist: John H. Herz. Born in Düsseldorf as Hans Hermann Herz in 1908, he studied law at the University of Cologne and became Kelsen’s first doctoral student—on the subject of the identity of states during revolutions and shifts of territory—upon the latter’s arrival in November 1930. In 1934, Herz would follow his mentor to the Graduate Institute of International Studies in Geneva, where he went on to write a dissertation on national socialist international legal doctrine, subsequently published under the pseudonym Eduard Bristler.¹⁵ It still rates as one of the main works on the subject. After emigrating to the United States, Herz worked during the last years of the war for the Central European Section of the Office of Strategic Services (OSS)—the precursor to the Central Intelligence Agency—together with Franz Neumann, Herbert Marcuse, and Otto Kirchheimer, all prominent scholars of Theodor Adorno and Max Horkheimer’s Institute for Social Research. Herz was also a member of the U.S. legal delegation to the Nuremberg Trials. From 1941 to 1952 he taught at Howard University of Washington, D.C., an almost exclusively African-American establishment, before becoming professor at the City College of the City University of New York, where he would stay until his retirement in 1977. Two of his monographs, *Political Realism and Political Idealism* (1951) and *International Politics in the Atomic Age* (1959) firmly established his place in international relations scholarship.¹⁶

The transformation from the German-Jewish student of international law Hans Hermann Herz to the American political realist John H. Herz has now been traced in Jana Puglierin’s marvelous intellectual biography. While the attention being paid to Herz is perhaps not comparable to the wealth of material being produced

on Morgenthau, the former has nonetheless been experiencing something of a resurgence in international relations circles, with Ken Booth, Peter Stirk, and others devoting a series of publications to him.¹⁷ But now, for the first time, we have a meticulous and well-researched intellectual biography that is as groundbreaking as was Christoph Frei's biography of Morgenthau when it was published more than a decade ago.¹⁸ Puglierin's book will undoubtedly have a similar effect, inducing a whole army of doctoral students and researchers to expand on various aspects of Herz's work and intellectual heritage in the years to come.

Puglierin draws on a variety of archival material, including the Herz collection at the German and Jewish Intellectual Emigré Collection at the University of Albany. Moreover, she regularly cites from the extensive correspondences that Herz maintained with his family and close friends, in particular Ossip K. Flechtheim.¹⁹ These documents offer a wealth of insights into the ways in which Herz struggled to come to terms with his American environment—on the one hand being grateful for all the opportunities emigration had offered, on the other remaining steeped in cultural and intellectual ties to the homeland that had persecuted him. Until his death in 2005, Herz himself supported Puglierin's endeavor, granting him a series of interviews in 2001 and 2005.

Those interested in the heritage of international relations theory will very much appreciate Puglierin's constant juxtaposition of Herz with some of his prominent contemporaries. Just like Morgenthau, Herz was also, as Puglierin writes, a "disillusioned Kelsenite" (p. 84); and although he explicitly tried to distance himself from the work of his former mentor, the types of issues he would go on to address in his work on foreign policy, as well as the solutions he would propose, were decidedly marked by Kelsen. As Puglierin argues, Kelsen's pure theory of law filtered and channeled Herz's perception, and through it he was sensitized to the systematic differentiation between *Sein* and *Sollen*, reality and values, morality and law (p. 36). Indeed, Kelsen's international legal theory was the first lens through which Herz analyzed international relations (p. 44). Nevertheless, and unlike Morgenthau, Herz would go on to explicitly take issue with Kelsen's ideas. For him, the binding force of a legal order did not lie, as Kelsen (and Morgenthau) had asserted, in the effectiveness of sanctions, but rather in the "establishment of legal liability through the constation of non-norm-conforming conduct"; Kelsen's attempt to convey "an aura of legality to extra-legal fact," Herz charged, only made it "the most sophisticated natural law theory which has been developed this century."²⁰

Herz's own approach to international relations was a compromise, a consensus position between the realities of power relations among states and the idealistic visions of how things ought to be. Contrary to the "human nature" realism of Morgenthau and Niebuhr, Herz sought to give a social-systemic analysis that did not attempt to answer the question of whether man possessed an inherent will to power or an element of sin-induced evil. Instead, he founded his reflections on the "security dilemma," the conceptual tool for which he is remembered most. According to Herz, politically active groups and individuals are constantly

concerned about their security from being attacked, subjected, dominated, or annihilated by other groups and individuals. Striving to attain security from such attack, they are driven to acquire more and more power in order to escape the impact of the power of others. This, in turn, renders the others more insecure and compels them to prepare for the worst. Since none can ever feel entirely secure in such a world of competing units, power competition ensues, and the vicious circle of security and power accumulation is on.²¹

The result of this security dilemma is what Herz called "realist liberalism," a continuous oscillation between political idealism and political realism, between the optimism of Niebuhr's "children of light" and the sobering realization, proclaimed by the "children of darkness," that political and economic power considerations override all aspirations for world peace.²² But instead of resignation in the face of the pursuit of power and self-interest, realist liberalism, Herz argued, is "the theory and practice of the *realizable* ideal."²³ Just like Morgenthau, Herz advocated Max Weber's *Verantwortungsethik*, an ethic of responsibility. The key "idealist" insight was that humans can act, but this need not lead to utopian policy if the "ethical liberal," as Herz called him, clearly recognized the limits to the means that can be used to exercise power within the liberalist paradigm: "To that extent, [the ethical liberal] has to be a Political Realist. This is the paradox, the danger, and ultimately the tragic guilt involved in a life of action."²⁴

While Puglierin's juxtaposition of Herz and Morgenthau is an insightful device to contextualize Herz within mid-century realist thought, she may have slightly overstated the idea that the contradistinction between Kelsen and Schmitt is mirrored in the differences between Herz and Morgenthau. This in itself does not invalidate Puglierin's correct analysis of the links between Herz and Kelsen, but as was already outlined above, there may indeed be more "Kelsen" in the thought of Morgenthau than many in International Relations tend to assume. The

common association of Morgenthau with Schmitt is due to the significant impact of earlier scholarship by William Scheuerman and Martti Koskenniemi, both of whom focused heavily on the link between the two in their analysis²⁵—and both of whom have since acknowledged that their emphasis on Schmitt led to the minimizing of other influences. But as Puglierin rightly notes, Herz grappled with the thought of Kelsen for far longer than Morgenthau did. Interestingly, Herz and Morgenthau had almost identical positions with regard to the world state (which both deemed to be inconceivable under present conditions) and both postulated the possibility of world government through more effective cooperation on the international level.

DISPUTES, TENSIONS, AND THE WILL TO POWER

The renewed engagement in International Relations with mid-twentieth-century realism has been given a further boost by the recent publication by Hartmut Behr and Felix Rösch of one of Morgenthau's early works on the justiciability of disputes in international law. *La notion du "politique" et la théorie des différends internationaux* (1933)²⁶ was, in fact, Morgenthau's first publication in French following his move from Frankfurt am Main to Geneva, and thanks to the efforts of the editors, who managed to obtain the publishing rights from Morgenthau's heirs, we now have a very precise and meticulous translation into English by Maeva Vidal. The volume consists not only of the translated text of around sixty pages but also of an eighty-page introductory essay by Behr and Rösch, as well as two very useful annexes: a complete bibliography of Morgenthau's published and unpublished writings and a timeline of the major episodes in his life.

Translating theoretical texts is always a challenge—and in this case, the challenge is intensified by the fact that Morgenthau, having only recently been catapulted into a Francophone environment, did not write particularly clear or grammatically correct French. Indeed, in order to make sense of the text one at times needs to translate it back into the original German of the author's thoughts, making this more of a translation of German into English via French, rather than an actual French-English translation. But Maeva Vidal manages this task beautifully, and we now have a very clear rendition of what constitutes one of Morgenthau's least accessible publications.

La notion du "politique" is, in fact, a shortened and revised version of Morgenthau's doctoral dissertation in international law, which he had written in Frankfurt am Main under the supervision of Karl Strupp. Entitled *Die internationale Rechtspflege, das Wesen ihrer Organe und die Grenzen ihrer Anwendung; insbesondere der Begriff des Politischen im Völkerrecht*,²⁷ it dealt with the extent to which states felt obliged to submit their disputes to international settlement—or, to phrase it differently, the extent to which it was possible for states to adhere to their obligations under international law while at the same time ensuring that issues of vital or national interest were formally acknowledged to lie outside of the law's scope. Rejecting the commonly voiced "vertical" distinction between legal disputes and disputes over conflicts of interests, Morgenthau proposed a "horizontal" distinction that singled out certain disputes—namely, those related to the honor and vital interests of the disputing parties—from the set of legal disputes. "Legal" and "political" were not opposing terms, he argued—any dispute could, once it had reached a certain degree of intensity, become a political one. It was thus necessary to distinguish between "objective" and "subjective" limits to judicial settlement, a distinction that, Morgenthau asserted, could be captured by the concept of "tensions" (*Spannungen*): a disagreement between states would be called a "dispute" if it could be expressed in legal terms, whereas "tension" refers to a situation "involving a discrepancy, asserted by one state against another, between the legal situation on the one hand and the actual power relation on the other."²⁸

The distinction between objective and subjective limits to judicial settlement did not sit well with the reviewers of the published version of Morgenthau's dissertation, who included some of the major figures in international law, including Paul Guggenheim, Hersch Lauterpacht, and Hans Wehberg.²⁹ Indeed, the idea that there were political tensions that overruled, or preceded, international law's claim of relevance in addressing interstate disputes was not what those insisting on the binding force and material scope of international law wanted to hear. As Lauterpacht asserted, "it is the refusal of the state to submit the dispute to judicial settlement, and not the intrinsic nature of the controversy, which makes it political."³⁰ When Morgenthau arrived in Geneva he was thus keen to address the criticisms he received from such lofty heights, and this he did in his short publication *La notion du "politique."* Positive international law did not have the necessary tools to grasp the concept of the political, he charged, and as a result, all previous attempts, including those of Lauterpacht, ended up defining the political in

contradistinction to the notion of legal questions or questions susceptible to a juridical solution (p. 103). This, as Morgenthau would continue to argue throughout his career, was precisely the problem of the “internationalism” that had corrupted interwar thought. “Liberal foreign policy,” he would go on to write, “developed two distinct methods of dealing with the two types of international disputes: compromise for the so-called ‘political’ disputes or conflicts of interests and the rule of international law for the so-called ‘legal’ disputes.”³¹

While international lawyers such as Lauterpacht were still trying to reconcile the demands of normativity and concreteness by positing the wide material scope of the law, and thereby downplaying the role that political considerations had on the actual workings of the international legal system, Morgenthau decided to prioritize the social reality of the political. His stated aim in *La notion du “politique”* was to unravel what he called the concept’s philosophical and sociological foundations (p. 106)—a task he went about in part by engaging with, and dismissing, Carl Schmitt’s conceptualization. Echoing Max Weber, he would go on to argue that “all foreign policy is only the will to maintain, increase or assert one’s power (*puissance*), and these three manifestations of political will are expressed here by the fundamental empirical forms consisting of: the policy of the status quo, the imperialist policy, and the policy of prestige” (p. 118). This is a formulation Morgenthau would repeat again in many of his American monographs, including *Politics Among Nations*. And given the complete lack of any enforcement mechanisms, international law, he charged, was bound by the willingness of states, and this willingness was only present when the distribution of power was such that maintaining one’s share was the policy to follow. The moment this “balance of power” was in jeopardy, international law lacked the necessary rules for peaceful change—hence, the distinction between “disputes” and “tensions.”

As the preceding paragraphs have illustrated, situating Morgenthau’s little volume in its context of production is no simple feat, not least for an audience of international relations scholars who no longer possess much training in international legal theory. Indeed, it is a shame that the lengthy introductory essay by Behr and Rösch does not dwell on this context a bit more—beyond German *Staatslehre* (theory of the state), it is precisely the international law debates around Lauterpacht, Guggenheim, and Wehberg that provided the setting for Morgenthau’s text. It is thus perhaps also somewhat misleading of Behr and Rösch to claim that the text constitutes one of Morgenthau’s “most important

contributions to political theory” (p. 156), an assertion that again occludes the international law debates in which the text is situated. From that perspective, it is also rather unfortunate that the book has been titled simply *The Concept of the Political*, rather than reproducing the full title of the original. It thus runs the risk of reinforcing the common misperception in International Relations that Morgenthau’s only legal heritage worth noting is his relationship to Schmitt’s thought. But perhaps one needs to apply Morgenthau’s own pragmatism to such issues: if the book sells better as a result, and more people end up reading it, then that is certainly a good thing for promoting the intellectual origins of the field. And in any event, such minor issues should not detract from the genuine merits of the travails of Behr and Rösch in making an English translation of Morgenthau’s text available in an affordable edition.

CONCLUSION

In 1964, William Scheuerman’s former teacher, the late Judith N. Shklar—the first woman ever to receive tenure at Harvard University’s Department of Government—published her second book. It was entitled *Legalism: An Essay on Law, Morals and Politics*, and in it she portrayed mid-twentieth-century political realism as “legalism gone sour.”³² The works of émigré jurists such as Hans J. Morgenthau, she argued, had had the effect of projecting the thought style of legal formalism onto its professed opponents: the same arguments that legal theoreticians had previously used to separate law from morality were now being used by political realists to preserve politics from both law *and* morality.

According to Shklar, nowhere was this more obvious than in the field of International Relations, in which positivist international law was being ostracized as a form of dangerous internationalism. In Morgenthau’s words, the “noble experiment of Geneva,” characterized by the “dominant doctrine of legal formalism,” had led to a legalism “to which the history of the world appeared as a succession of legal cases handled most unintelligently by an unenlightened humanity.”³³ If the interwar period was one in which international law had been overestimated, the pendulum had since then moved to the other extreme: the complete underestimation of law and legal institutions, particularly in the international realm.³⁴ As Martti Koskenniemi has extensively outlined, the product of the Weimar heritage in American international relations theory, as

embodied in the legacy of mid-twentieth-century political realists, is precisely the absence of an image of law as being inherently valid.³⁵

According to many international lawyers, that heritage has continued to this day. The “disappointment with formalism’s failure to fulfill the expectation that rules and processes would contain readymade solutions to social conflict” has led, as a repercussion of the way in which mid-century realists were interpreted, to the increasing adoption of a technical language of compliance, regimes, and good governance.³⁶ This language transforms the normative ambiguity of formalism into what Koskenniemi calls a “culture of dynamism,” which replaces normative disagreement with bureaucratic management—with knowledge of the latter located in the academic field of International Relations, rather than in public international law. And this development can even be felt in the way in which International Relations seeks to write its own “disciplinary” history—as a backward (and often uncritical) projection of its own technical agenda, steeped in the vocabulary and thought style of political science. This is perhaps why much of the current literature that seeks to rehabilitate the “rich tradition” of mid-century realists continues to shy away from rebuilding the bridge with international law, even though that is precisely where many of these realists began their scholarly careers. In that sense, the three books discussed here are all stepping-stones in that direction, and they will hopefully entice others in International Relations to rethink their prejudices and confront the legal heritage of many of their field’s key personalities.

NOTES

¹ All in-text references are to these works.

² Hans J. Morgenthau, *Politics Among Nations: The Struggle for Power and Peace* (New York: Alfred A. Knopf, 1948).

³ James P. Speer II, “Hans Morgenthau and the World State,” *World Politics* 20, no. 2 (1968), pp. 207–227, at p. 225.

⁴ Campbell Craig, “Hans Morgenthau and the World State Revisited,” in Michael C. Williams, ed., *Realism Reconsidered: The Legacy of Hans J. Morgenthau in International Relations* (Oxford: Oxford University Press, 2007), p. 195.

⁵ *Ibid.*, p. 199.

⁶ Hans J. Morgenthau, *La réalité des normes, en particulier des normes du droit internationale: Fondements d’une théorie des normes* (Paris: Félix Alcan, 1934), p. 1. For a more detailed treatment of Morgenthau’s early writings and their links with Kelsen, see Oliver Jütersonke, *Morgenthau, Law and Realism* (Cambridge: Cambridge University Press, 2010), esp. pp. 75–104.

⁷ See Arthur Baumgarten, *Die Wissenschaft vom Recht und ihre Methode*, three vols. (Tübingen, Ger.: Mohr-Siebeck, 1920, 1922). The play on words is based on the fact that *Lehre* (the study of) and *Leere* (emptiness) are pronounced identically in German.

⁸ Hans Kelsen, *Das Problem der Souveränität und die Theorie des Völkerrechts. Beitrag zu einer reinen Rechtslehre* [1920], 2nd ed. (Tübingen, Ger.: Mohr, 1928), p. 2.

⁹ Morgenthau, *Politics Among Nations*, p. 211.

¹⁰ See Hans Kelsen, *Unrecht und Unrechtsfolge im Völkerrecht* (Vienna: Julius Springer, 1932).

- ¹¹ Morgenthau, *La réalité des normes*, p. 242.
- ¹² See Arthur Baumgarten, "Souveränität und Völkerrecht," *Zeitschrift für ausländisches Recht und Völkerrecht* 2 (1931), pp. 305–334.
- ¹³ Morgenthau, *Politics Among Nations*, p. 419.
- ¹⁴ Martti Koskenniemi, *From Apology to Utopia: The Structure of International Legal Argument* [1989], reissue with a new epilogue (Cambridge: Cambridge University Press, 2005).
- ¹⁵ Eduard Bristler [John H. Herz], *Die Völkerrechtslehre des Nationalsozialismus* (Zurich: Europa, 1938).
- ¹⁶ John H. Herz, *Political Realism and Political Idealism* (Chicago: University of Chicago Press, 1951); and John H. Herz, *International Politics in the Atomic Age* (New York: Columbia University Press, 1959).
- ¹⁷ See in particular Ken Booth and Nicholas J. Wheeler, *The Security Dilemma: Fear, Cooperation and Trust in World Politics* (Basingstoke, U.K.: Palgrave Macmillan, 2008); Peter Stirk, "John H. Herz: Realism and the Fragility of the International Order," *Review of International Studies* 31, no. 2 (2005), pp. 285–306; and *International Relations* 20, no. 2 (2008), a special issue on Herz.
- ¹⁸ Christoph Frei, *Hans J. Morgenthau: An Intellectual Biography* (Baton Rouge, La.: Louisiana State University Press, 2001).
- ¹⁹ Flechtheim followed a similar trajectory: born in Düsseldorf, he also fled to Geneva, where he studied at the Graduate Institute before emigrating to the United States. Unlike Herz, however, he eventually returned to Germany, where he received tenure in 1952.
- ²⁰ John H. Herz, "The Pure Theory of Law Revisited: Kelsen's Doctrine in the Nuclear Age," in Salo Engel, ed., *Law, State and International Legal Order: Essays in Honour of Hans Kelsen* (Knoxville, Tenn.: University of Tennessee Press, 1964), p. 114 and 108.
- ²¹ John H. Herz, "Idealist Internationalism and the Security Dilemma," *World Politics* 2, no. 2 (1950), pp. 157–80, at p. 157.
- ²² See Reinhold Niebuhr, *The Children of Light and the Children of Darkness: A Vindication of Democracy and a Critique of Its Traditional Defense* (New York: Charles Scribner's Sons, 1944).
- ²³ Herz, "Idealist Internationalism and the Security Dilemma," p. 179; emphasis in the original.
- ²⁴ Herz, *Political Realism and Political Idealism*, p. 143.
- ²⁵ See in particular William E. Scheuerman, *Carl Schmitt: The End of Law* (Lanham, Md.: Rowman & Littlefield, 1999), pp. 225–51; and Martti Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960* (Cambridge: Cambridge University Press, 2002), pp. 413–509.
- ²⁶ Hans Morgenthau [sic], *La notion du "politique" et la théorie des différends internationaux* (Paris: Sirey, 1933). One can only imagine how upsetting it must have been for Morgenthau to realize that the publishers had misspelled his surname on the front cover and throughout the volume.
- ²⁷ "The judicial function in the international realm, the nature of its organs and the limits of its application; in particular, the concept of the political in international law." The published version appeared in 1929, with a slightly modified and abbreviated title: Hans J. Morgenthau, *Die internationale Rechtspflege, ihr Wesen und ihre Grenzen* (Leipzig, Ger.: Noske, 1929).
- ²⁸ *Ibid.*, p. 78 [my translation, OJ].
- ²⁹ For a discussion of the reviews, see Jütersonke, *Morgenthau, Law and Realism*, pp. 53–60.
- ³⁰ Hersch Lauterpacht, *The Function of Law in the International Community* (Oxford: Clarendon Press, 1933), p. 164.
- ³¹ Hans J. Morgenthau, *Scientific Man vs. Power Politics* (Chicago: Chicago University Press, 1946), p. 94.
- ³² Judith N. Shklar, *Legalism: An Essay on Law, Morals and Politics* (Cambridge, Mass.: Harvard University Press, 1964), p. 126.
- ³³ Hans J. Morgenthau, "About Cynicism, Perfectionism, and Realism in International Affairs," in Hans J. Morgenthau, *The Decline of Democratic Politics* (Chicago: University of Chicago Press, 1962), p. 128.
- ³⁴ See Josef L. Kunz, "The Swing of the Pendulum: From Overestimation to Underestimation of International Law," *American Journal of International Law* 44, no. 1 (1950), pp. 135–40.
- ³⁵ Koskenniemi, *The Gentle Civilizer of Nations*, p. 495.
- ³⁶ *Ibid.*, p. 496.