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Book Review: Right v. Might--International Law and the Use of Force

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BOOK REVIEW

RIGHT V. MIGHT: INTERNATIONAL LAW AND THE USE OF FORCE. By Louis Henkin,* Stanley Hoffmann,** Jeane J. Kirkpatrick,*** Allan Gerson,**** William D. Rogers,***** and David J. Scheffer.****** New York, New York: Council on Foreign Relations Press 1989. Pp. 124. $12.95.

Reviewed by Erik M. Jensen†

The central contest between reason and force is inescapable today. — John Temple Swing[1]

We are in the process of observing fiftieth anniversaries of major Second World War events, as well we should. Much that happened in the 1930s and 1940s must never happen again; we must learn from the nightmarish experience. Few argue—and no one can argue persuasively—that the Allies should not have resisted the Axis powers with the full power that they could muster.[2] "If that fight was not holy," wrote

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1. Swing, *Foreward* to L. HENKIN, RIGHT V. MIGHT: INTERNATIONAL LAW AND THE USE OF FORCE at vii (1989) [hereinafter RIGHT V. MIGHT].

2. Of recent serious writers, Paul Fussell comes closest to such a position, suggesting that the brutality was such that this war, like all wars, had little redeeming meaning:

> Now, fifty years later, there has been so much talk about "The Good War," the Justified War, the Necessary War, and the like, that the young and the innocent could get the impression that it was really not such a bad thing after all. It's thus necessary to observe that it was a war and nothing else, and thus stupid and sadistic, a war, as Cyril Connolly said, "of which we are all ashamed . . . a war . . .

Eric Sevareid, "if it was not absolutely true that the contest was between good and evil, then no battle ever was such."[3]

To international lawyers, the Allied effort was holy because it involved resistance to unquestioned aggression. Use of force to repulse an armed attack was permissible under traditional international law, and the United Nations Charter, the "epitaph to Hitler,"[4] currently recognizes such a right.

But resistance to armed attack is the easy, and hence uninteresting, case under international law. The experience of World War II raises a far more interesting question: Are there situations other than resisting armed invasion in which the use of force by states may be blessed? Or, to put the question in our anniversary context, what might the Allies-to-be have done before the Axis breached national boundaries?

Had the Allies been governed by today's United Nations Charter, the answer might seem clear: nothing. Article 2(4) generally precludes the use of force and proclaims the sanctity of borders:

> All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations.

The Charter was not intended to be completely divorced from reality, however, and article 51 does provide an exception for self-defense:

> Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security.

Article 51 is narrow in scope, however, and the Charter contains no other explicit exceptions to the prohibition of article 2(4).

For most international lawyers, articles 2(4) and 51 exhaust the law governing the use of force. Questions can arise, of course, at the margin—"self-defence" is not a self-defining term[5]—but most cases are

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> which lowers the standards of thinking and feeling . . . which is as obsolete as drawing and quartering."

P. FUSSELL, WARTIME: UNDERSTANDING AND BEHAVIOR IN THE SECOND WORLD WAR 142 (1989).

3. Sevareid, *Introduction* to ALL ENGLAND LISTENED: THE WARTIME BROADCASTS OF J.B. PRIESTLEY at ix (1967), *quoted in* P. FUSSELL, *supra* note 2, at 165.

4. Henkin, *The Use of Force: Law and U.S. Policy*, in RIGHT V. MIGHT, *supra* note 1, at 62.

5. *See id.* at 44-46.

clear: force is unlawful.

Whatever the lawyers say, the Charter provisions, as so interpreted, are often violated.[6] Sometimes states with no regard for the law or for moral standards openly breach the "no force" rule, but breaches (or arguable breaches) may occur for entirely plausible reasons. In short, the "no force" position is neither clearly accepted nor clearly right.

All of which leads to the subject of this review. If *Right V. Might* serves its purposes, it should help us analyze, if not answer, many of the hard questions concerning the use of force. This concise volume presents essays written by some of today's leading scholars of international law and politics. According to its cover, the book participates in "one of the most controversial debates of our times: Does international law permit the use of military force to promote democracy and human rights?"

The four papers[7] and the introductory essay[8] are the culmination of five years' work. The enterprise began with a Council on Foreign Relations conference in 1984—convened in reaction to the United States intervention in Grenada[9]—and continued with study group meetings from 1985 until 1988. Other critical events—including the United States involvement in Lebanon, the United States mining of Nicaraguan harbors in 1985, the United States bombing of Libya in 1986, and the International Court of Justice's ruling in *Nicaragua v. United States*[10]— occurred during this period and added immediacy to the discussions.[11]

These essays are thus not seat-of-the-pants efforts. They are undoubtedly useful introductions to several different perspectives in international relations, ranging from the traditional primacy-of-international-law viewpoint, represented by Professor Henkin, to the neorealism of Professor Kirkpatrick and Allan Gerson,[12] to what might be called the extra-

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6. Professor Henkin argues that the violations are not nearly as common as generally assumed, but he provides a lengthy list of his own. *Id.* at 50-52.

7. Kirkpatrick & Gerson, *The Reagan Doctrine, Human Rights, and International Law*, in RIGHT V. MIGHT, *supra* note 1, at 19; Henkin, *supra* note 4, at 37; Hoffmann, *Ethics and Rules of the Game between the Superpowers,* in RIGHT V. MIGHT, *supra* note 1, at 71; Rogers, *The Principles of Force, The Force of Principles*, in RIGHT V. MIGHT, *supra* note 1, at 95.

8. Scheffer, *Introduction: The Great Debate of the 1980s*, in RIGHT V. MIGHT, *supra* note 1, at 1. The volume also includes a foreword by John Temple Swing, Executive Vice-President of the Council on Foreign Relations.

9. "Intervention" is a careful lawyer's substitute for "invasion." *Cf.* Henkin, *supra* note 4, at 51.

10. Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), 1986 I.C.J. 14.

11. Swing, *supra* note 1, at vii, viii-xi.

12. *See* Scheffer, *supra* note 8, at 9-11.

legal approach of Professor Hoffmann.[13] The book has many of the same attractions as a local McDonald's: the product is the result of years of development, the consumer can get through it quickly, and, all in all, it is good. In fact, I cannot imagine a better intellectual snack for those craving to know what international lawyers and international relations scholars talk about.

For many readers, however, especially those previously unfamiliar with international law concerns, *Right V. Might* will leave a lump in the stomach; the book is short, but not always easy to digest. The language is clear enough, but it is striking how sterile and otherwordly much of the debate about force is. In particular, the contributions by some international lawyers—Professor Henkin is the most prominent example—deserve special criticism. To this reader, the essays on international law pale in comparison to the neorealism, with its rejection of legal formalism, advanced by Kirkpatrick and Gerson.[14]

Flogging international law has become almost too easy an exercise. It can be overdone, and it probably will be overdone in this review. It nevertheless needs to be done periodically because international law theorists take themselves so seriously and overstate the merits and the effects of international law.

Stressing the limitations of international law is important if only because there is the danger (remote, to be sure) that leaders of the United States might be convinced to follow international law without regard to the national interest. That great student of *realpolitik*, Hans Morgenthau, explained, "The choice that confronts the diplomat is not between legality and illegality, but between political wisdom and political folly."[15] International law is admittedly important: it is often implicitly obeyed, and it often sets worthy goals.[16] It is best, however, in dealing

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13. Hoffmann accepts Henkin's international law analysis and builds on it. Hoffmann, *supra* note 7, at 73. Hoffmann's approach is extra-legal in that he looks for norms and informal arrangements that are not strictly legal in character but that affect superpower behavior, such as the norm against the use of nuclear weapons. Although I refer to Hoffmann's work only in passing in this review, I should note that his essay contains much to admire.

14. Gerson is also a lawyer—he was counsel to the United States mission to the United Nations (1981-1985) and Deputy Assistant Attorney General (1985-1986)—but some lawyers are reasonable.

15. *Quoted in* Krauthammer, *The Curse of Legalism*, NEW REPUB., Nov. 6, 1989, 44, 44.

16. That there is no authoritative body to enforce international law does not mean that it does not exist. The limits of the Austinian notion, that law requires a sovereign able to enforce it, has long been discredited. *See* R. SUMMERS, LON L. FULLER 48-54 (1984). Much of our everyday life is constrained by law which has effects because we

with questions that do not involve force.[17]

Consider, for example, an issue suggested by the onset of the Second World War: Could an attempt have been made to stop Hitler before his armies crossed German borders? More generally, must a state or group of states wait for an armed attack to come before using force, even when the wait may insure greater losses and perhaps result in defeat?

The question is not an unfair one. Law professors sometimes use hypotheticals that are so unreal that they obfuscate rather than clarify, but it is proper to ask international law to deal with situations that we know can occur.[18] And most international lawyers, applying today's United Nations Charter, do have an answer: no pre-emptive action may be taken. Although, in some circumstances, a few legal scholars are willing to shoehorn pre-emption into the Charter's definition of "self-defence,"[19] the fit is awkward; article 51 requires that the force be used in response to an "armed attack."

But so what? Leaders of a state faced with humiliation will not hesitate to use pre-emptive force if they think it will do any good, and they will have common sense on their side. The very idea of interpreting Charter language in crisis situations—is pre-emption "self-defence" or not?—illustrates the absurdity of lawyers' arguments on many issues in international relations. With its categorical answer to a fundamental question about force, "the law—international law—is an ass. It has nothing to offer. Foreign policy is best made without it."[20] While critics often speak of international law as mush,[21] Henkin and company appar-

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treat it as having effects. *See* L. HENKIN, HOW NATIONS BEHAVE 92-94 (2d ed. 1979).

17. With questions of force, defenders of international law often resort to tautology: self-interest and international law are deemed to coincide, and international law is therefore vindicated. For example, practitioner and former diplomat Rogers, commenting favorably on the fact that no world wars have occurred since the acceptance of the United Nations Charter, notes that "[n]ations are increasingly aware of . . . new realities and are inclined to act in their own self-interest in ways that are consistent with the principles of international law." Rogers, *supra* note 7, at 99.

18. Professor Henkin admits that the pre-emption issue has some intellectual interest, "particularly in the context of nuclear strategy," but the issue, he suggests, is not really important. It "has remained academic." Henkin, *supra* note 4, at 46. As a description of the world, Henkin's position is untenable. Moreover, disparaging an issue as purely academic is an extraordinary posture for an international law scholar.

19. *See* Scheffer, *supra* note 8, at 7.

20. Krauthammer, *supra* note 15, at 50 (stressing that whether military force should be used to stop Libya from producing poison gas is a policy judgment that should not depend on international law).

21. *See, e.g.*, R. DAVIES, WHAT'S BRED IN THE BONE 213 (1985) ("I am sure you know what a vague area [international law] can be, if somebody wants to hang around a

ently want to prove that international law has some black letter rules.[22]

Clarity of rules is desirable, all other things being equal, but it is not an end in itself. For those who believe that international relations must transcend Charter interpretation, it is hard to view pre-emptive behavior—again, I emphasize, in *some* circumstances—as necessarily unreasonable and immoral. The sainted Bertrand Russell, after all, suggested in the late 1940s that the United States should use its short-term nuclear monopoly to frighten the Soviet Union into submission.[23]

Contrary to the statement with which this essay began, reason and force can coincide. Sabers are sometimes rattled for good reasons; wars are sometimes just. The use of force, or the threat of its use, in the short run may result in the use of less force in the long run. Emphasis on the United Nations Charter in isolation from other concerns does not help leaders of states grapple with real world problems: How should a would-be moral actor proceed in a world filled with immorality—a world, I might add, where it is now unrealistic to expect the Security Council to act as the protector of important values?

In *Right V. Might*, it is the neorealists, Kirkpatrick and Gerson, not the traditional international lawyers, who emphasize the need for reciprocity if the international legal order is to protect good as well as evil: "Like all law worthy of the name, [international law] is based on reciprocity."[24] With convincing effect, Kirkpatrick and Gerson quote John Stuart Mill:

> The doctrine of non-intervention, to be a legitimate principle of morality, must be accepted by all governments. The despots must consent to be bound by it as well as the free States. Unless they do, the profession of it by free countries comes but to this miserable issue, that the wrong side may help the wrong, but the right must not help the right. Intervention to

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university."); *see also* L. HENKIN, *supra* note 16, at 4 n.* ("The lawyer generally, at least in the United States, also tends to think of international law as not being 'hard law,' and [the lawyer's] attitude is often not substantially different from that of the diplomat.").

22. Henkin has also criticized unthinking deference to international law in other contexts, *see* L. HENKIN, *supra* note 16, at 3, but I found no such realism in his *Right V. Might* essay. Civil disobedience, justified by the importance of higher values, is popular among many academic lawyers in the United States, but apparently not among the international types.

23. *See* A.J. AYER, BERTRAND RUSSELL 25 (1972). Russell later changed his mind, of course, adopting pacifist positions. *Id.* My use of "sainted" to describe Russell is questionable, I suppose. *See id.* at 155 ("Russell would not have wished to be called a saint of any description."). But if Russell were right in his religious views, he would be in no position now to care one way or the other about adjectives.

24. Kirkpatrick & Gerson, *supra* note 7, at 31.

enforce non-intervention is always rightful, always moral, if not always prudent.[25]

The modern reader, imbued with the cultural and moral relativism that Allan Bloom rails against,[26] has much to object to in the Mill quotation, with its reference to "free States," and in my use of the terms "good" and "evil." To compound my sins, I have no reservations in locating the United States on the side of the angels, a posture that may smack of jingoism. Dare I suggest that the United States is morally superior to Idi Amin's Uganda? If that be jingoism, I plead guilty.

All things considered, the United States has been a positive force in world affairs. Nevertheless, most of the international lawyers writing in *Right V. Might* disdain that sort of evaluation; they instead substitute the simple "no-force" test. But if we refuse to try to distinguish between good and evil behavior and between good and evil intentions, what is the point? If international law is really value neutral, why should we care what it says about behavior?[27]

The title of this book is itself evidence of moral blindness: *Right V. Might: International Law and the Use of Force.* It suggests, to begin with, a necessary antipathy between right and the use of force, a flaw that I have already criticized. But the title also implies that right and international law coincide, a dubious premise at best, albeit one appealing to international lawyers. "Right" is a peculiar term to use in connection with a regime whose goal is the preservation of national territorial integrity.

As I have suggested, a concern for the principle of reciprocity helps protect the United States national interest, but it also protects the international order. Without the principle, international law contains the seeds of its own destruction; governments have no reasoned basis for taking timely actions against those who would destroy that order. Moreover, if a legal order is founded on principles so obviously deficient, all of international law is devalued. As Morton Kaplan has written:

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25. 3 J.S. MILL, DISSERTATIONS AND DISCUSSIONS: POLITICAL PHILOSOPHICAL AND HISTORICAL 176 (1875), *quoted in* Kirkpatrick & Gerson, *supra* note 7, at 19.

26. By "relativism," I mean the idea that questions of value are ultimately matters of preference, uninformed by reason, and that any one culture is therefore as worthy as any other. *See generally* A. BLOOM, THE CLOSING OF THE AMERICAN MIND (1987).

27. None of this is to say that the United States is above moral reproach. Its actions should always be evaluated, and some will fail. But to suggest that, because the United States falls short of perfection, it has no claim to act on moral concerns—a position Henkin comes close to taking—is ridiculous. Henkin, *supra* note 4, at 61 (rejecting intervention "on the ground that human rights are being violated, as indeed they are everywhere"). That position would have the effect of eliminating moral discourse altogether.

> [T]he Charter . . . insists upon the outlawry of resort to arms except in self-defense. Yet . . . the present structure of world politics [in 1969-1970] is as far out of line with such a norm as current state practice would seem to indicate. In such a case . . . the attempt to avow the norm despite repeated and insistent violations may serve only to cast doubt upon the structure of international law generally.[28]

I am among the doubters.

That is not the end of it. There is a third concern—beyond the United States national interest and the protection of the international legal order—if articles 2(4) and 51 are emphasized at the expense of other political considerations. International lawyers tend to discount the real moral concerns, those associated with individual rights, that abound in international relations. On this issue, too, *Right V. Might* contributes to the diminution of moral discourse.

Consider Hitler again. Even if you believe that Hitler's dreams of conquest were not sufficiently discernable to justify pre-emptive action under any acceptable rationale—no one making such outrageous statements could possibly mean what he says, could he?[29]—might the Allies reasonably have used force to stop Hitler's violations of human rights within German borders?[30]

With the benefit of hindsight, I see no convincing argument that the world would not have been improved by intervention in German affairs. The international lawyers would conclude nonetheless that, applying today's Charter language, intervention was not justified. Although Professor Henkin notes that "[t]he Charter . . . is not neutral between democracy and totalitarianism, between justice and injustice, or between respect for human rights and their violation,"[31] for practical purposes it might as well be.

Henkin concludes that "[i]nternational law provides no more basis for permitting the export of democracy by force than for permitting the export of socialism by force."[32] If that is so, and if the Charter favors

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28. Kaplan, *International Law and the International System*, in GREAT ISSUES OF INTERNATIONAL POLITICS 21, 24 (M. Kaplan ed. 1974).

29. And apparently Hitler's goals and capabilities were not clear, except to leaders with a hardened view of human nature. *See generally* W. MANCHESTER, THE LAST LION: WINSTON SPENCER CHURCHILL: ALONE 1932-1940 (1988) (describing Churchill's fruitless attempts to convince the British Government that rearmament was necessary to counter Hitler).

30. Regardless of when genocide became German policy, that systematic abuses of human rights were occurring could not have been in serious dispute after the mid-1930s.

31. Henkin, *supra* note 4, at 62.

32. *Id.* at 56.

democracy, a hands-off position is hardly a moral view, however hard Henkin tries to dress up his argument with the language of rights. Post-World War II history provides little hope for the spontaneous spread of democratic and individualistic values. I am ready, in light of recent events in eastern Europe, to be convinced otherwise, but I remain skeptical.

Peace is the "paramount value," Henkin states,[33] and the use of force is the worst abuse of human rights.[34] That conclusion is not at all obvious, however, except in the most trivial sense. A death may be an abuse of human rights—the United States Declaration of Independence recognizes "life" as an "unalienable right"—but the traditional understanding is that there are some matters worth fighting for. The American Revolution was a rights-based undertaking, even though blood was inevitably going to be spilled. Neorealists Kirkpatrick and Gerson are seldom seen as concerned with human rights,[35] but, of the authors represented in *Right V. Might*, it is only they who see an important relationship between rights and peace: respect for human rights is a condition to a worthy peace.[36]

The focus of much of the discussion in *Right V. Might* is the relationship of the Reagan Doctrine to international law, a subject meriting some attention. That doctrine, really a point of view derived from several presidential addresses, suggests that, in some circumstances, protection of human rights and support for oppressed populations may be more important than preservation of national boundaries. Kirkpatrick, United Nations Ambassador during part of the Reagan Administration (1981-1985), and thus a defender of the doctrine, explains it as follows:

> [It] is above all concerned with the moral legitimacy of U.S. support—including military support—for insurgencies under certain circumstances: where there are indigenous opponents to a government that is maintained by force, rather than popular consent; where such a government depends on arms supplied by the Soviet Union, the Soviet bloc, or

33. *Id.* at 38. In that respect Henkin's views might be characterized as realist. Realists like Morgenthau stressed the need for order before justice. *See* Hoffmann, *supra* note 7, at 74-75.

34. Henkin, *supra* note 4, at 61; *see also id.* at 38 ("Peace was more important than progress and more important than justice" in the United Nations Charter.).

35. Kirkpatrick & Gerson, *supra* note 7, at 27. Kirkpatrick's famous essay distinguishing between traditional and revolutionary autocracies (that is, totalitarian and authoritarian regimes) has been unfairly interpreted by Kirpatrick's critics as an expression of indifference to human rights. *See* Kirkpatrick, *Dictatorships & Double Standards*, COMMENTARY, Nov. 1979, at 34.

36. Kirkpatrick & Gerson, *supra* note 7, at 26-28.

> other foreign sources; and where the people are denied a choice regarding their affiliations and future. The Reagan Doctrine supports the traditional American doctrine that armed revolt is justified as a last resort where rights of citizens are systematically violated. This view is, of course, stated clearly in the Declaration of Independence, which insists that *legitimate* government depends on the consent of the governed.[37]

What is objectionable about that statement? It is an accurate description of the scope of the Declaration's principles. "[A]ll men are endowed with certain unalienable rights"—self-evidently so, Jefferson wrote—and the category "all men" was not limited to those persons within the boundaries of the United States. If rights matter within the United States, they matter outside the United States, unless we consider non-Americans to be less than fully human.[38] Relativists who deny the existence of natural rights, and hence the rightness of the United States founding principles, will not like my formulation, but one cannot escape considering the nature of "rights" in evaluating a book that purports to contrast right and might.

The Reagan Doctrine bothers Professor Henkin for another reason. The United States in recent years has been less inclined, he believes, to assert traditional justifications for its arguable breaches of the United Nations Charter.[39] To fit his doctrine nominally within the Charter's terms, Reagan spoke in terms of self-defense,[40] but I agree with the international lawyers that the Reagan Doctrine represents a modification of international law as they understand it. Nevertheless, it is mindboggling that Henkin and Scheffer find the Soviet Union's behavior to be worthy of greater praise simply because its leaders have mouthed better words than Ronald Reagan did. For example, Henkin draws solace from the fact that, as they violate the Charter's dictates, totalitarian regimes continue to profess adherence to Charter principles,[41] and Scheffer is pleased that Mikhail Gorbachev officially renounced force and urged the rule of law.[42] Come on, guys! Was Al Capone significantly more honorable because he sang the Star Spangled Banner and went to church? What is wrong with a little realism about Soviet history and

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37. *Id.* at 20-21.

38. *See id.* at 24. No one in *Right V. Might* takes the position that citizens of other states are not endowed with rights.

39. Henkin, *supra* note 4, at 54-56.

40. Kirkpatrick & Gerson, *supra* note 7, at 22 (quoting Reagan's 1985 State of the Union address).

41. Henkin, *supra* note 4, at 69 n.33.

42. Scheffer, *supra* note 8, at 16.

intentions?[43]

One might disagree with some or all of the examples used by Reagan (Nicaragua, Afghanistan, and so on) to justify intervention in the name of self-defense, and one might reject the self-defense rationale altogether, but the Reagan position was not inherently immoral.[44] We can easily come up with cases where intervention could have desirable effects by serving principles, such as the protection of human rights, that the United Nations Charter was intended to further.

Indeed, it makes little sense, as Kirkpatrick and Gerson emphasize, to study the Charter provisions on force in isolation from the provisions governing human rights. Let us put on our lawyers' hats. We would not interpret the United States Constitution or the Internal Revenue Code without regard to the purposes behind those documents; why then should we, as lawyers, interpret the United Nations Charter in that way? If we look to the purposes of the Charter—and I am willing to accept Professor Henkin's description of the Charter's grounding in democracy, justice and human rights[45]—forceful intervention may be justified, in some circumstances, to further Charter values.[46]

When the Charter is interpreted in that way, the interventionist policy articulated by the Reagan administration appears to be quite limited, more limited than it might have been. The Reagan Doctrine was not a challenge to evil everywhere. For example, the doctrine would not have come into play to support the overthrow of someone like Idi Amin as long as he kept his butchery within Ugandan boundaries and was not supported by outside powers. Nor would it have applied to Hitler's atrocities confined to Germany. Nonetheless, regardless of whether intervention to topple an Amin or a Hitler would have been consistent with international law, would it have been less "right"?[47]

I have tried to show that international law's relationship to "right" is

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43. By "realism," I do not mean to suggest that the apparent disintegration of the Eastern bloc is irrelevant. Events are promising, indeed, and Kirkpatrick and Gerson may be excessively pessimistic about Soviet intentions, at least in the short run. Kirkpatrick & Gerson, *supra* note 7, at 29. Nevertheless, "realism" does require some skepticism about self-serving statements emanating from regimes not previously noted for benevolence.

44. *But see* Hoffmann, *supra* note 7, at 88-90 (arguing that there is little political or ethical justification for the Reagan Doctrine).

45. *See supra* text accompanying note 29.

46. Kirkpatrick & Gerson, *supra* note 7, at 25.

47. I am not saying that, had I been advising the President of the United States, I would have advocated using force to overthrow Amin. But such a decision involving might could well be regarded as based on "right."

tangential at best. If Charter articles 2(4) and 51, narrowly interpreted, deserve fidelity, it is not because the international law regime is an inherently moral one. Peace for its own sake, without regard to the possibilities for future acts of aggression and without regard to the human rights violations that may coexist with a condition of peace, is not necessarily a morally satisfying condition.[48]

As I warned, however, I may have been unfair to international law in some respects: the no-force rule does have reasons behind it. From my jingoistic standpoint, I am happy, on balance, to trust a few Western democracies to police the world, but I understand others' unwillingness to draft aspirational rules in terms of United States goals. Assuming that the no-force rule has any effect at all, there is value in stating the rule in a neutral manner to constrain others.

In addition, I have largely ignored the ambiguity inherent in real world decisions. My use of Hitler and Amin as examples in this review has made the moral choices easier than they ordinarily will be. Evil seldom rises to that level—one can be thankful for small favors—and in evaluating Hitler and Amin I have had the benefit of hindsight. Moreover, for practical reasons, we do not want every state making its own determination as to whether another society needs improvement.[49] The likelihood of success through intervention may also be problematic. The ambiguities are endless.

All of this makes perfect sense, but it does not make sense for reasons that *Right V. Might* suggests. The argument based on ambiguity is one of prudence, not of fundamental "right," and we should not confuse the two types of arguments. It is one thing to say that we should be restrained because we are unsure; it is quite another to suggest that, as reasoning men and women, we cannot make reasonable determinations about the quality of various regimes and the lives of their citizens. This latter position is a retreat from morality and reason; it has little to do with "right."[50]

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48. To the extent the no-force rule does help to preserve order, it may lay the groundwork for protection of rights. Although order is not valuable for its own sake, "law and order" at the local level may be necessary to preserve *civil* society, which is itself necessary to protect the exercise of individual rights. A similar argument may be advanced at the international level, I suppose, although I am doubtful that international order necessarily leads to the generation of humanistic values within particular states.

49. *See* Henkin, *supra* note 4, at 56 ("Distinguishing between them as a matter of law is hopeless in a world where many of the 160 states claim to be socialist and few of them have authentic democracy.").

50. My distinction between prudence and more fundamental concerns arises in other contexts, such as first amendment law in the United States. Perhaps the Nazis should be

Right V. Might contains much of interest, and it is a useful primer. But it is not helpful as a guide to national behavior. The amoralistic positions of many of its contributors are not ones that the United States, or any other states concerned with principle, should adopt. The United Nations Charter, narrowly construed, is not a moral document. While few seriously advocate the Charter's repudiation, moral discourse would not be harmed by such an act, and life would go on with states acting largely, although not entirely, on the basis of perceived self-interest. Professor Henkin uses doomsday rhetoric to suggest that repudiating the Charter would help create a relativistic world: "Rejecting the Charter in effect would reject Nuremberg, undermine our national justification in history, and reestablish Adolf Hitler as no worse than anyone else."[51] That is nonsense. A relativistic world in which mini-Hitlers are immune under international law already exists in the international lawyers' interpretation of the United Nations Charter's dictates on force.

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able to march in Skokie because it is inconceivable that they would win any significant numbers of converts and, in general, we are concerned about unsophisticated local officials making determinations about what beliefs are constitutionally acceptable. "When in doubt, let them march" is a prudential argument of some persuasive power. If, however, we justify permitting a march on the basis of the marketplace of ideas (because Nazism is just another set of political beliefs, it might prevail in the long run, and we are indifferent to whether it does), we have abdicated our responsibilities as morally reasoning human beings. Nazism cannot prevail on the merits.

51. Henkin, *supra* note 4, at 58.