

Word Politics Verbal Strategy Among the Superpowers; How Nations Behave Law and Foreign Policy

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BOOK REVIEWS

Word Politics: Verbal Strategy Among the Superpowers. THOMAS M. FRANCK and EDWARD WEISBAND. New York: Oxford University Press. 1971. Pp. xiii, 176. \$5.95.

How Nations Behave: Law and Foreign Policy. LOUIS HENKIN. New York: Praeger Press. 1968. Pp. xii, 324. \$3.50.

For at least a generation the American study of international politics has been dominated by self-styled realists who believe, as Hans Morgenthau does, that policy makers must choose "prudence" over principle and recognize that world opinion and law are mere facades behind which states invariably act to extend, maintain, or demonstrate their power. The two books here under discussion in very different ways offer articulate and occasionally passionate counter-arguments to such an analysis. Significantly, Thomas M. Franck and Louis Henkin are lawyers with both practical knowledge of how states make policy and definite views as to how legal advice may be vital in times of international crisis. It is important to all three authors, as it should be to all concerned citizens, to rebut the realist corollary that law is, at most, accidental to international politics.

I

In *Word Politics* Franck and Edward Weisband argue that states must transcend narrow formulations of their immediate advantages in a particular course of action. They avoid the word "law" and in what is often an angry indictment of diplomatic myopia assert both that a state must "listen to itself as if it were the enemy speaking,"¹ and that "an amorally conceived foreign policy, at least for the United States, is likely . . . to be unsuccessful by the standards of 'hard' strategy and national-interest cost/benefit accounting."² One way the United States might deter Soviet aggression is to sheath its own sword. It might also guard its tongue. The authors use two invasions (of the Dominican Republic in 1965 and of Czechoslovakia in 1968) as examples of what happens when force and rhetoric get the most of us.

In both instances one superpower invaded a satellite while the

¹ T. FRANCK & E. WEISBAND, *WORD POLITICS: VERBAL STRATEGY AMONG THE SUPERPOWERS* 8 (1971).

² *Id.* at viii-ix.

other inveighed but did not act against a blatant violation of international law. The invasions produced nearly identical doctrines by which the superpowers claimed the right to stifle political change within their surrounding communities. President Johnson proclaimed the right of the Organization of American States (which the United States then dominated) to contrive a multilateral force to prevent the establishment of another Communist government in the Western Hemisphere.³ Those who would use internal or external force to implant Communism in our sphere of influence were forewarned that the United States would counter with its own force. Similarly, Leonid Brezhnev rationalized the Soviet invasion of Czechoslovakia with the following "principles": no state within the Soviet orbit could unilaterally withdraw from regional or ideological obligations; the Socialist community (dominated by the Soviet Union) has the right to impose standards of behavior within that orbit, and force, if necessary, would be used to maintain such standards.⁴

Franck and Weisband contend that American justification of its use of force in 1965 made the Soviet action not only less heinous but also more probable. In effect, American objections in 1968 were "estopped" by our previous deeds and words. An "echo phenomenon" operated by which unnecessarily broad American language could be used by the Soviets. The two crises and the reactions of the invaded nations were "as symmetrical as a classical ballet, with the two powers in the second movement neatly changing roles and dancing each other's steps."⁵

If world order is worth attaining, great powers must avoid careless and unnecessary bullying of lesser states within their spheres. The authors point out that the Johnson doctrine arguably protects our national interests by excluding Communism from the hemisphere, stabilizes the entire world system by providing hard boundaries between "theirs" and "ours," maintains a polar balance against an adversary many believe is not prepared to loosen its grip over its satellites, and possibly deters small states from causing trouble for larger ones.⁶ The costs of pursuing this policy, however, may be far greater than the benefits. Bloc politics does not necessarily connote international stability or the diminution of tension. Maintaining spheres of influence

³ *Statement by President Johnson, May 2, 1965*, in 52 U.S. DEP'T OF STATE BULL. 745 (1965).

⁴ See *Sovereignty and International Duties of Socialist Countries*, Pravda, Sept. 25, 1968, reprinted in translation, N.Y. Times, Sept. 27, 1968, at 3, col. 1.

⁵ T. FRANCK & E. WEISBAND, *supra* note 1, at 97.

⁶ *Id.* at 114-15.

is expensive economically, militarily, and in terms of prestige and good will; emulating the Soviet Union can prove disastrous for our own self-image and the images others have of us. In addition, "[i]t is far more likely that Russia can persist with a Brezhnev Doctrine than that the United States will persevere with the Johnson Doctrine."⁷ By the peculiar pendulum of American politics intervention leads to isolation and isolation to neglect which, in turn, contributes to later crises.

Word Politics is, on the whole, a skillful attempt to deal with this dilemma. Borrowing concepts from law and strategic studies (especially non-zero-sum gaming and reciprocity⁸), Franck and Weisband spin an argument which is not novel to lawyers: take care how you write your contracts. What they call the "rules of the new strategy" depend upon the ways superpowers act and speak to each other.

In this new world, the two superpowers do not simply "cancel each other out." They create a wholly new condition of strategic interaction in which the role of force is still enormous even though it is immobilized, but in which new nonmilitary concepts—mutually shared expectations, images, climate, signals, patterns of behavior, and reciprocity—take on new strategic significance. It is in the management of these added factors that one superpower has an opportunity not to defeat but to outgain the other through skillful verbal strategy.⁹

Only by reassessing revolutionary change within its own region and accepting "mutual accommodation" in dealing with such changes—as the Soviet Union did vis-à-vis Finland and Austria—can American strategic interests and images coincide. The Nixon administration's low-key reaction to the Allendé government in Chile is perhaps one hopeful sign.

Word Politics should be read by lawyers and statesmen concerned with the ways utterances and precedents affect world order. This is not to say that the book is flawless. Franck and Weisband write as if world politics resulted primarily from polar antipathies between Soviet and American fortresses. Yet in nearly every way polarity is lessening and, accordingly, instances of unilateral intervention into spheres of influence will diminish. There is growing evidence which indicates the contemporary distaste of the superpowers for confrontation: the tolerance of the superpowers regarding the independent foreign policies of Chile, Peru, and even Rumania; the confusing patterns of alliances manifested in the United Nations, partly as the result of mainland

⁷ *Id.* at 116.

⁸ See generally T. SCHELLING, *THE STRATEGY OF CONFLICT* (1963).

⁹ T. FRANCK & E. WEISBAND, *supra* note 1, at 120.

China's emergence as a permanent member of the Security Council; the tragic nonideological conflicts between lesser powers and the inability of the superpowers to deter them. Confronted by isolationism at home and competition abroad the two superpowers seem increasingly willing to avoid intervention as a tool of diplomacy.

Franck and Weisband claim that words are more significant than actions. They seem to be saying that the gravest flaw in our Dominican adventure was not the invasion itself but the unnecessarily broad language used to defend it. Although the point is useful—words used as rationalization do affect future expectations—this may appear to many readers as overstatement if not sophistry. If suspicion of complicity was created by the American invasion of the Dominican Republic, it arose primarily from the deed itself rather than after-the-fact rationales. Similarly, the authors' prescription—"any action by the United States which cannot be credibly set out in terms that build and strengthen a conceptual framework for the kind of reciprocally principled world we want, can never be in our national interest"¹⁰—is two parts wishful thinking and one part naïveté. If aggression sets precedents it might equally be argued that brinkmanship is the best way to play the game.¹¹ Those who think otherwise should expect Franck and Weisband to anticipate and rebut this *reductio ad absurdum*.

II

How Nations Behave broadly defines the situations in which law is a necessary component of foreign policy. Henkin's analysis considers the ways accepted rules already influence policy making. The book is especially valuable in accounting for the occasions when law does not work—when statesmen consider the costs and benefits of pursuing lawful behavior and decide that circumstances require lawlessness.

Readers should beware that this book is often slow-paced and even pedestrian in its treatment of the role of law in the cold war. Indeed, for the first 200 pages or so one gets a competent but tedious account of how law has been used in international crises. Law, in this context, means "a sense of obligation, and a sense of violation when it fails."¹² Lacking the political instruments necessary for a fully predictable and enforceable law, international society muddles through on the fragile basis of this sense of obligation. As Henkin indicates,

¹⁰ *Id.* at ix.

¹¹ See, e.g., J. PAYNE, *THE AMERICAN THREAT* (1970).

¹² L. HENKIN, *HOW NATIONS BEHAVE: LAW AND FOREIGN POLICY* 15 (1968).

"the lawfulness of an action" depends upon "whether a hypothetical impartial international tribunal would conclude that particular behavior violated some international rule, standard, or undertaking."¹³

States do, at times, sacrifice immediate advantages for the sake of (1) establishing a general principle, (2) creating reasonable expectations, or (3) avoiding criticism or retaliation. In some cases, of course, these may be insufficient reasons under the realist view for acting lawfully: in situations, for example, when territory or security can be gained quickly, when interpretations of what is lawful are ambiguous or culture-laden, or when domestic pressures require "nationalist" solutions. Henkin suggests, perhaps too ingenuously, that states, like common criminals, calculate the probability of being punished.¹⁴

On the whole, Henkin plays down the significance of twentieth century developments. He contends that

technology has been generally a stabilizing influence, in support of the norm of international law which forbids the unilateral use of force. Ideological conflict, on the other hand, has increased instability, threatened the foundations of international law, reduced its content, and weakened its observance.¹⁵

Perhaps the most volatile development of all is the increase in the number of sovereign states. The rise of new states makes more difficult the creation of law presumably based on unanimity, generates new issues, stimulates competition for affection between the East and West, and encourages regional rather than universal perspectives of what the law is and what it should be.

Analysis of three cases constitutes one of the longest, and to some extent most gratuitous, sections of the book.¹⁶ The use of law to settle the tripartite invasion of Egypt in 1956 (in which according to Henkin the law against unilateral use of force was violated but vindicated), Israel's participation in the abduction and trial of Adolf Eichmann (in which the law failed), and the American "quarantine" of Cuba in 1962 (in which America, by Henkin's standards, demonstrated restraint in avoiding such broad doctrines as "anticipatory self-defense") are well worth reading but poorly chosen examples of the law at work. For a more comprehensive view of how the law affects international crises this book should be complemented with modern casebooks on the subject.¹⁷

¹³ *Id.* at 37.

¹⁴ *Id.* at 50, 89.

¹⁵ *Id.* at 104-05.

¹⁶ *Id.* at 186-242.

¹⁷ *E.g.*, L. SCHEINMAN & D. WILKINSON, INTERNATIONAL LAW AND POLITICAL CRISIS: AN ANALYTIC CASEBOOK (1968).

Henkin notes (much as did Franck and Weisband) that

[e]vents in international relations, like cases in law, have a life of their own. They are available as possible precedent beyond their original facts, context, or justification in doctrine. Responsible nations, in their own behavior or in reacting to the behavior of others, avoid hardened categories and deal imaginatively with precedents with due concern for their impact on international law.¹⁸

Henkin concludes his effort soberly but optimistically by taking issue with the so-called realists who claim that "the most serious fault of our past policy formulation" lies "in something that I might call the legalistic-moralistic approach to international problems."¹⁹ George Kennan, a realist who uttered those remarks, complained that the "law is too abstract, too inflexible, too hard to adjust to the demands of the unpredictable and the unexpected," and that the possibility that violations will be punished should never be assumed.²⁰ Hans Morgenthau is also cited for the proposition that "the legalistic approach to essentially political problems is but an aberration from the true law of politics."²¹ Henkin counters: first, to both Kennan and Morgenthau the law seems to be exclusively hard and fast decisions, a clear and perhaps purposeful misinterpretation; second, that "realists" who try to monopolize the term "national interest" should recognize that if the term has any behavioral meaning it must encompass observance of law.²²

By focusing on today's (or at least yesterday's) issues, and by relating international law to them, Henkin builds a persuasive case that law is effective in international society. He does not, however, look at many of the currently controversial areas of the law such as the law of the seas and the law of expropriation of foreign holdings. Thus his focus on the law's condemnation of unilateral force (like Franck and Weisband's) cannot be taken as all there is to be said about how nations behave subject to law.

III

It is encouraging to find two such different yet compatible books concerning the relevance of law to war and peace issues. Narrow and even incorrect interpretations of "law" have been used by all kinds of rogues to justify the most heinous of actions. Both of these books,

18 L. HENKIN, *supra* note 12, at 240.

19 *Id.* at 254, quoting G. KENNAN, *AMERICAN DIPLOMACY, 1900-1950*, at 95 (1951).

20 *Id.* at 255, quoting G. KENNAN, *supra* note 19, at 98-99.

21 *Id.* at 261, quoting Morgenthau, *Diplomacy*, 55 *YALE L.J.* 1067, 1078 (1946).

22 *Id.* at 258-66.

starting with different premises and ending with different conclusions, combine rational and legal approaches to world politics. The message in both seems to be that more careful adherence to legal principles is not only just but wise. Failure of American statesmen to honor the spirit of law among nations has cheapened international society without benefiting national interests.

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