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# Hans Morgenthau, Peaceful Change, and the Origins of American Realism

Talbot Imlay 

Département des sciences historiques, Université Laval  
Email: [Talbot.imlay@hst.ulaval.ca](mailto:Talbot.imlay@hst.ulaval.ca)

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*This article examines Morgenthau’s switch from international law to international politics, arguing that it was fundamental to his emergence as a founder of postwar realism in the United States. More precisely, it sets this switch in the context of a far-reaching but largely overlooked debate among American jurists during the 1930s on the question of peaceful change: of how to revise an international order or major aspects of it by means other than war. This debate provided Morgenthau with a solution to the impasse reached by his project in international law before World War II, allowing him to transform what appeared to be a problem from the vantage point of international law into a structural element of an approach to international politics—of his realism.*

Pitching a “volume on International Politics” to an editor in August 1945, Hans Morgenthau claimed he had been working on the project “from the very beginning of my academic career.”<sup>1</sup> The claim was only partially true. Morgenthau had certainly been interested in international politics since his dissertation, published in 1929, which explored the relationship between international politics and international law largely through the subject of arbitration between states. At the same time, Morgenthau initially worked in the field of legal theory: in virtually all his prewar writings, he approached international politics from the perspective of international law. The goal, he repeatedly affirmed, was to work out a “theory” of international law that could contribute to expanding the latter’s irenic influence on international politics. By the 1940s, however, Morgenthau had switched perspectives, situating his project in the field of international politics and not international law. “I am just engaged in writing a systematic treatise on international politics,” he informed a colleague in June 1947.<sup>2</sup> This switch would culminate the following year with the publication of *Politics among Nations*, widely viewed as a foundational text of postwar

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<sup>1</sup>Morgenthau to Roger W. Shugg (Alfred A. Knopf), 7 Aug. 1945, Library of Congress, Washington, DC (hereafter LOC), Hans J. Morgenthau Papers, Box 6.

<sup>2</sup>Morgenthau to Percy W. Bidwell, 26 June 1947, LOC, Box 121.

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realism. As a leading scholar remarked, the book “to a large degree made the field [international relations].”<sup>3</sup>

This article spotlights Morgenthau’s switch from international law to international politics, arguing that it was fundamental to his emergence as a founder of postwar realism in the United States. To be sure, the passage from law to politics is present in the sizeable scholarship on the origins of Morgenthau’s realism. Reacting against a political-science/international-relations (IR) literature that concentrates on Morgenthau’s post-1945 work, one group of scholars insists on the importance of his prewar writings. Generally speaking, these scholars seek, in Hans-Karl Pichter’s words, to “denaturaliz[e]” Morgenthau “as an American thinker” by rooting his realism in Weimar-era political and legal thinking.<sup>4</sup> Particularly relevant for this article is the contention that Morgenthau’s realism was basically a European product. The legal historian Oliver Jütersonke thus underscores the “undeniable link,” the “stunning” and “startling” similarities, and the absence of any “break” between Morgenthau’s prewar and postwar writings. In a recent article, Jütersonke even suggested that *Politics among Nations* could just as easily have been written by Hans Kelsen, the Austrian jurist best known for his “pure theory” of law.<sup>5</sup> Less provocatively, Christoph Frei, Morgenthau’s biographer, claims that the structure of *Politics among Nations* was “ready” when Morgenthau arrived in the United States in 1937.<sup>6</sup> Another group of scholars, meanwhile, situates the origins of Morgenthau’s realism in a more transnational framework, with Alfons Söllner describing it as a “new synthesis” of German and American ideas and Matthew Specter more recently describing it as a transatlantic “bricolage” dating back to the turn of the twentieth century.<sup>7</sup>

<sup>3</sup>Robert Jervis, “Hans Morgenthau, Realism, and the Scientific Study of International Politics,” *Social Science* 61/4 (1994), 853–76, at 853. Also see John A. Vasquez, *The Power of Power Politics: From Realism to Neotraditionalism* (Cambridge, 2009), 35–9.

<sup>4</sup>Hans-Karl Picher, “The Godfathers of ‘Truth’: Max Weber and Carl Schmitt in Morgenthau’s Theory of Power Politics,” *Review of International Studies* 24/2 (1998), 185–200, at 187. Two questions dominate the scholarship on Morgenthau’s prewar thinking. One concerns formative influences. See Alexander Reichwein, *Hans J. Morgenthau und die Twenty Years’ Crisis* (Frankfurt am Main, 2021); Felix Rösch, *Power, Knowledge, and Dissent in Morgenthau’s Worldview* (New York, 2015); William E. Scheuerman, “Realism and the Left: The Case of Hans J. Morgenthau,” *Review of International Studies* 34/1 (2008), 29–51; Robert Schuett, “Freudian Roots of Political Realism: The Importance of Sigmund Freud to Hans J. Morgenthau’s Theory of International Power Politics,” *History of the Human Sciences* 20 (2007), 53–78; and Christoph Frei, *Hans J. Morgenthau: An Intellectual Biography* (Baton Rouge, LA, 2001). The other question concerns Morgenthau’s experience as an émigré scholar. See Udi Greenberg, *German Émigrés and the Ideological Foundations of the Cold War* (Princeton, 2014); Felix Rösch, ed., *Émigré Scholars and the Genesis of International Relations: A European Discipline in America* (Basingstoke, 2014); and Mitchell G. Ash and Alfons Söllner, eds., *Forced Migration and Scientific Change: Émigré German-Speaking Scientists and Scholars after 1933* (Cambridge, 1996).

<sup>5</sup>Oliver Jütersonke, “The Image of Law in *Politics among Nations*,” in Michael Williams, ed., *Realism Reconsidered: The Legacy of Hans Morgenthau in International Relations* (Oxford, 2008), 93–117, at 107–8; Jütersonke, *Morgenthau, Law and Realism* (Cambridge, 2010), 33–4; and Jütersonke, “Kelsen and Morgenthau in America: Betwixt Legal Philosophy and International Politics,” *Austrian Journal of Political Science* 51/3 (2022), 73–82, at 78.

<sup>6</sup>Christoph Frei, “*Politics among Nations*: A Book for America,” in Cornelia Navari, ed., *Hans J. Morgenthau and the American Experience* (London, 2017), 55–74, at 57.

<sup>7</sup>Alfons Söllner, *Deutsche Politikwissenschaftler in der Emigration: Ihre Akkulturation und Wirkungsgeschichte. Mit einer Bibliographie* (Opladen, 1996), 146–65; and Matthew Specter, *The Atlantic*

Scholars, then, disagree on the German/European versus transatlantic sources of Morgenthau's realism. Significantly, though, both groups share an understanding of Morgenthau's switch from international law to international politics as something self-evident, as constituting a natural progression. For Jütersonke and Frei, law and politics blur into one another, with Morgenthau's postwar realism immanent in his prewar writings in international law. For others, Söllner most notably, Morgenthau's switch from international law to international politics fades from view, the why and how of it taking a backseat to broader reflections on processes of acculturation, transfer, reception, and blending (*Verschmelzung*). In a similar vein, Alexander Reichwein describes Morgenthau as a *Grenzgänger* between European legal and American political sciences, a fitting description but also one that effectively steers attention away from his switch to international politics.<sup>8</sup>

This article challenges understandings of Morgenthau's switch from international law to international politics as something seamless or of minor importance. It argues that this switch needs to be explained and that the explanation is vital for understanding his realism. To explain Morgenthau's switch, the article places it in the context of a far-reaching debate among American jurists during the 1930s on the question of peaceful change: of how to revise an international order or major aspects of it by means other than war. If peaceful change is a familiar concept in IR, the resulting scholarship is presentist-oriented, preoccupied with the issue of great-power transitions, especially in relation to China's rise.<sup>9</sup> The handful of historical studies tends to focus on the International Studies Conference (ISC), an international organization associated with the League of Nations, whose 1937 meeting in Paris was dedicated to peaceful change.<sup>10</sup> Part of a larger investigation into the origins of IR, these studies accentuate the international and transnational aspects of the discipline's history.<sup>11</sup> The emphasis on the ISC, however, downplays the scope, significance, and distinct quality of the American debate on peaceful change. In other countries, immediate policy questions held sway: in Germany and Italy, the need to justify concrete revisionist demands, and in Britain and France, the pros and cons of satisfying these

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*Realists: Empire and International Political Thought between Germany and the United States* (Stanford, 2022), 167.

<sup>8</sup>Reichwein, *Hans J. Morgenthau und die Twenty Years' Crisis*, 30.

<sup>9</sup>Peter Marcus Kristensen, "Peaceful Change' in International Relations: A Conceptual Archaeology," *International Theory* 13/1 (2021), 36–67; T. V. Paul, Deborah Welch Larson, Harold A. Trinkunas, Anders Wivel, and Ralf Emmers, eds., *The Oxford Handbook of Peaceful Change in International Relations* (Oxford, 2020); and Charles A. Kupchan, Emanuel Adler, and Jean-Marc Coicaud, *Power in Transition: The Peaceful Change of the International Order* (Tokyo, 2001).

<sup>10</sup>Jo-Anne Pemberton, *The Story of International Relations*, part 3, *Cold-Blooded Idealists* (London, 2020); Michael Riemens, "International Academic Cooperation on International Relations in the Interwar Period: The International Studies Conference," *Review of International Studies* 37/2 (2011), 911–28; and David Long, "Who Killed the International Studies Conference," *Review of International Studies* 32/4 (2006), 603–22.

<sup>11</sup>Jan Stöckmann, *The Architects of International Relations: Building a Discipline, Designing the World, 1914–1940* (Cambridge, 2022); and Katharina Elisabeth Rietzler, "American Foundations and the 'Scientific Study' of International Relations in Europe, 1919–1940" (Ph.D. thesis, University College London, 2009). A pioneering study is Brian C. Schmidt, *The Political Discourse of Anarchy: A Disciplinary History of International Relations* (Albany, 1998).

demands.<sup>12</sup> The American debate on peaceful change, by comparison, developed into a searching inquiry into the underlying dynamics of international relations. While a variety of groups (political scientists, economists, geologists, geographers, and journalists, among others<sup>13</sup>) participated in the debate, this article concentrates on jurists because their efforts to grapple with the question would prove instrumental to Morgenthau's realism.

By 1940 or so, Morgenthau's project of forging a theory of international law had reached an impasse. Emblematic of this situation was its treatment of peaceful change, a question Morgenthau broached but largely sidestepped. Significantly, this treatment mirrored that of other Weimar-era jurists, most notably Kelsen and Hersch Lauterpacht, two figures Morgenthau engaged with in his prewar writings. In addressing the question of the relationship between political and judicial disputes, Kelsen and especially Lauterpacht touched on the subject of peaceful change but refrained from grappling with it to anywhere near the extent that their American counterparts would. More significantly still, the American debate offered a way out of Morgenthau's impasse not because American jurists found a convincing answer to the challenge of peaceful change, but, paradoxically, because they failed to do so. This failure, and the extended debate underpinning it, pointed to peaceful change's potential to structure an analysis of international politics. To embrace this potential required changing vantage points—to consider international law from the perspective of international politics rather than the reverse. And this is precisely what Morgenthau did in *Politics among Nations*, a simple but decisive move that separates his prewar writings from his wartime writings. Peaceful change functioned as pivot, allowing Morgenthau to transform what appeared to be a problem for international law into a structural element of an approach to international politics—and of his realism. Peaceful change, in short, lay at the heart of what would become one of the most (if not *the* most) prominent paradigms in the United States for understanding international politics after 1945.

What follows is divided into three parts. The first part offers a synoptic view of Morgenthau's prewar project to work out a theory of international law, the impasse reached by 1940 or so, and the limited attention paid by Morgenthau and his European interlocutors to peaceful change. The second part examines the debate on peaceful change among American jurists, juxtaposing the positions of two eminent scholars at the time: Edwin Borchard and Quincy Wright. The section emphasizes two points: the far-reaching, systemic nature of the debate, and the inability of either Borchard or Wright to come up with a satisfactory solution to the question of peaceful change, a failure with significant implications for the relationship between international law and international politics and for Morgenthau's project to forge a theory of international law. The final part reassesses *Politics among Nations* through

<sup>12</sup>Heinrich Rogge, *Das Revisionsproblem: Theorie der Revision als Voraussetzung einer internationalen wissenschaftlichen Aussprache über 'Peaceful Change of Status Quo'* (Berlin, 1937); Corrado Gini, *Die Probleme der internationalen Bevölkerungs- und Rohstoffverteilung* (Jena, 1937); Albert Wigniolle, *La Société des nations et la révision des traités* (Paris, 1932); and Charles Roden Buxton, *The Alternative to War: A Programme for Statesmen* (London, 1936).

<sup>13</sup>This article is part of a larger book project on how diverse groups in the United States dealt with the question of peaceful change during the interwar and wartime years and how their efforts to do so shaped post-1945 American thinking about international politics.

the lens of peaceful change, which provided the book's architecture. Together, the three sections point to the pivotal role of peaceful change in Morgenthau's switch from international law to international politics—a switch fundamental to the emergence of realism.

## I

Morgenthau began his academic career as a student of international law and not of international politics. To be sure, neither political science nor IR existed as independent disciplines in Weimar Germany, even if developments, most notably the foundation of the Deutsche Hochschule für Politik in 1920, signaled a growing interest in the science of politics. It is also true that the study of public law embraced politics, principally through the influence of *Staatswissenschaften* (the sciences of state or public administration).<sup>14</sup> Nevertheless, as his PhD makes clear, Morgenthau initially identified himself as a legal scholar. In the thesis, as well as in his subsequent prewar scholarship, Morgenthau labored to fashion a “scientific theory” that could encompass all political disputes within the category of justiciable disputes. Taking as its starting point the legal formalism often associated with Hans Kelsen and the Vienna school, which Morgenthau could neither ignore nor embrace, such a theory would promote international law into an effective instrument for maintaining peace. Though not a pacifist, Morgenthau believed that war's increasingly destructive consequences made it urgently necessary to foster the peaceful resolution of disputes between states.<sup>15</sup>

Presented as an inquiry into the potential scope of international arbitration, Morgenthau's PhD thesis addressed a question well known to Weimar-era jurists—that of the differences between judicial and political disputes between states.<sup>16</sup> Morgenthau concluded that the two types of dispute could not be distinguished in the abstract because states themselves acted as the ultimate judge of what was political or not. As several scholars have recognized, Morgenthau's demarche involved an engagement with Carl Schmitt, whose concept of the “political” loomed large over the landscape of Weimar legal theory.<sup>17</sup> Unlike Schmitt, for whom the friend–foe binary famously constituted the inescapable essence of politics, Morgenthau proposed that politics were what states make of it.<sup>18</sup> States attributed “vital importance” (*Lebensinteressen*) to some issues by endowing them with “intensity” (*Intensität*), a quality, *pace* Schmitt, that he understood not in absolute

<sup>14</sup>For the Hochschule see Wilhelm Bleek, *Geschichte der Politikwissenschaft in Deutschland* (Munich, 2001), 198–228. For background see Olivier Lepsius, *Die gegensatzaufhebende Begriffsbildung: Methodenentwicklungen in der Weimarer Republik und ihr Verhältnis zur Ideologisierung der Rechtswissenschaft im Nationalsozialismus* (Munich, 1994).

<sup>15</sup>For Morgenthau's views on pacifism see “Der Zusammenbruch des Pazifismus” and “Der Selbstmord mit gutem Gewissen,” both undated but from the early 1930s, LOC, Hans J. Morgenthau Papers, Box 96. I am grateful to Dr. Felix Rösch for providing a copy of the second text.

<sup>16</sup>Jütersonke, “Hans J. Morgenthau and the Limits of Justiciability in International Law,” 188–90.

<sup>17</sup>For example, see Nicolas Guilhot, *After the Enlightenment: Political Realism and International Relations in the Mid-Twentieth Century* (Cambridge, 2017), 84–114; and Martti Koskeniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law* (Cambridge, 2007), 413–509.

<sup>18</sup>A reference to Alexander Wendt's classic article “Anarchy Is What States Make of It: The Social Construction of Power Politics,” *International Organization* 46/2 (1992), 391–425.

(either–or) but in relative (more or less) terms. Issues accorded a high degree of intensity by at least one state risked becoming “tensions” (*Spannungen*); that is, disputes resisting resolution through peaceful means, principally arbitration. While some issues were more likely than others to become “tensions,” for example those involving national borders or minority populations, Morgenthau insisted that the “intensity” of any issue—and therefore what counted as a political as opposed to a judicial dispute—could not be determined in advance by any “objective measure.”<sup>19</sup>

In his next major study, published in 1933, Morgenthau once again sought to establish the theoretical basis for an international legal order capable of encompassing political disputes. Legal positivism, he insisted, could not do so because it willfully ignored the political. But a critique of legal positivism brought Morgenthau no closer to a solution given that the fundamental obstacle to such a theory remained unchanged: the distinction between the two types of dispute depended on the subjective decisions of states. As before, Morgenthau remarked on the differences between international law and international politics, the one subject to “certain static tendencies” and the other forming a “dynamic domain” that reflected the ever-shifting “actual balance of power” (*le rapport réel des forces*). Having postulated that states pursued one of three policies (increasing, maintaining, or affirming power), Morgenthau considered the possibility of discontented states opting to pursue an “imperialist” policy; that is, to seek through force to change the international legal order to realign it more closely with the balance of power. To forestall this scenario, international legal norms must be developed that were “elastic” or “dynamic” enough to enable states “to determine the actual balance of forces and the actual requirements [for the peaceful resolution of disputes] in an objective and consensual manner.” That such norms operated in domestic legal orders offered some grounds for optimism. Like many interwar jurists, Morgenthau imagined the international legal order as a “rudimentary” version of the domestic one, a scalar relationship that encapsulated the promise of progressive evolution— notwithstanding what he recognized as major differences between the two orders. It remained unclear, though, just what these norms might be.<sup>20</sup>

Accordingly, perhaps, Morgenthau devoted his next book, published in 1934, to norms, a critical component of Kelsen’s scholarship. The goal, he affirmed, was to elaborate an empirical “theory of norms” to facilitate the peaceful resolution of all political disputes, whatever their nature. As always, Morgenthau’s ruminations led him back to the state. If international norms possessed internal qualities such as logical coherence, their “effectiveness” (*efficacité*) ultimately hinged on consensus among states and, even more, on the ability to impose compelling sanctions on norm breakers, a collective capacity that depended on the decision of individual states, each with its own domestically derived normative legal order informing its decisions. So long as international law persisted in its condition of “primitivism,”

<sup>19</sup>Dr Hans J. Morgenthau, *Die internationale Rechtspflege, ihr Wesen und ihre Grenzen* (Leipzig, 1929), 37, 59–72, 98–105. Morgenthau would later accuse Schmitt of stealing his idea of intensity. See Jütersonke, *Morgenthau, Law and Realism*, 38–9.

<sup>20</sup>Hans Morgenthau, *La notion du “politique” et la théorie des différends internationaux* (Paris, 1933), 41–2, 61–7, 71–2. Also see Felix Rösch and Hartmut Behr’s introduction to the English translation: Morgenthau, *The Concept of the Political* (Basingstoke, 2012), 3–79.



the potential of sanctions, much like arbitration, would always be hostage to the whims of states.<sup>21</sup> Two years later, Morgenthau, in another broadside against legal formalism, called for a “realist” and “critical” theory of international law able to distinguish between “operative” (*en vigueur*) and “non-operative” norms, framing this as a precondition for incorporating the “political” as an “intrinsic element” of international law.<sup>22</sup>

Morgenthau would make one more major attempt before the postwar period to pursue his project in international law. The result, an article published in 1940 in the *American Journal of International Law* (*AJIL*), the profession’s flagship journal, offered little that was new. Framed once again as a critique of legal formalism, whose “system worship and dogmatic conceptualism” fatally handicapped international law, the article reiterated the need for a “realist” theory of international law encompassing “legal rules” as well as “the psychological, social, political and economic forces which determine the actual content and working of legal rules and which, in turn, are determined by them.” Although dressed up in functionalist language, Morgenthau’s project had not changed: to provide international law with the theoretical tools to resolve “political” disputes. Equally important, it remained unclear how this was to be achieved, especially at a time when international politics, unlike international law, appeared to be undergoing dynamic change. At present, Morgenthau admitted, “the science of international law becomes a system of guesses, enjoying a greater or lesser chance of being proved true according to the factual development of the functional relationship between the social forces and the rules of international law.”<sup>23</sup>

Significantly, Morgenthau’s efforts to work out a theory of international law led him to broach the question of peaceful change, principally through two comparisons. One was between the domestic and international legal orders. While several institutions (elections, legislatures, judiciary) existed in the domestic sphere to revise the legal order in response to evolving political forces, such institutions were lacking completely or were poorly developed in the international sphere. Left unposed was the question of how, then, the international legal order could be peacefully revised. The second comparison was between international law and international politics: in his prewar writings, Morgenthau contrasted the static tendencies of international law (a common characterization among legal scholars at the time), which functioned to uphold the existing legal order, with the dynamism of international politics resulting from changing power relations between states and from changing definitions of interests by states. The resulting “discrepancy” between the two risked generating intractable political disputes (“tensions”) because the potential stakes included not simply specific issues (precise treaty terms, for example), but also the legitimacy of the international legal order as it grew increasingly misaligned with the changing “power relations” between states. The implication was obvious: unless some means could be found to make international law a

<sup>21</sup>Hans Morgenthau, *La réalité des normes, en particulier des normes du droit international: Fondement d’une théorie des normes* (Paris, 1934).

<sup>22</sup>Hans Morgenthau, *Positivism mal compris et théorie réaliste du droit international* (Madrid, 1936), 14–15, 17, 19–20.

<sup>23</sup>Hans J. Morgenthau, “Positivism, Functionalism, and International Law,” *American Journal of International Law* 34/2 (1940), 260–84, at 273–4, 278.

dynamic rather than a static instrument, states dissatisfied with the international legal order would have little recourse for revising the latter aside from war.

Just as significantly, if Morgenthau's project prompted him to broach the question of peaceful change, he did so in cursory fashion, offering vague references to the need for "dynamic" and "elastic" norms or "new values." His most serious treatment of the question before *Politics among Nations* came in a two-part article on sanctions published in 1935. Any attempt to elaborate a "theory of international sanctions," Morgenthau asserted, necessarily raised the issue of the legitimacy of the international order that sanctions were designed to uphold. This, in turn, posed several challenges for international law—those of "treaty revision, of the status quo, of a dynamic law, [and] of the *rebus sic stantibus* clause" that a contract loses its validity if the underlying circumstances change. Yet rather than discuss these challenges, Morgenthau oddly reverted to legal formalism, claiming that the issue of legitimacy was inappropriate because it entailed judgments of fairness (or justice)—judgments based on external criteria such as moral values and not internal ones. The quest for fairness, he continued, was an "unrealizable dream" as no legal order could be fair for all parties. The goal of an international order, consequently, could only be "relative" and not "absolute" justice, an affirmation that left open the question of whose perspective to assume in judging fairness. Intriguingly, Morgenthau concluded with a defense of the status quo, disregarding his previously critical stance towards the victorious powers which, he believed, had been engaged since 1919 in a misguided enterprise to freeze the peace settlement. Jurists, he now insisted, could not "reason against" the existing international legal order and remain jurists. This veiled plea for "effective sanctions" against norm breakers almost certainly reflected support for sanctions against Italy following its invasion of Ethiopia in 1935. But it meant subordinating international law to the immediate imperatives of international politics now construed as a defense of the status quo.<sup>24</sup>

Morgenthau's argument concerning the impossibility of objectively distinguishing legal (justiciable) disputes from political ones was not especially original. Lauterpacht, for instance, wrote largely in the same sense on the issue.<sup>25</sup> Nor was his treatment of peaceful change novel. Kelsen and others called for a more dynamic international law, one that would contribute to "overcom[ing] the dogma of individual state sovereignty" instead of buttressing an outmoded international legal order.<sup>26</sup> In some ways, this lack of originality confirms the value of rooting Morgenthau in Weimar-era legal and political debates. Yet equally noteworthy is that neither Morgenthau nor his fellow European interlocutors paid

<sup>24</sup>Hans Morgenthau, "Théorie des sanctions internationales," *Revue de droit international et de législation comparée* 16 (1935), 474–503, 809–36, at 829–30.

<sup>25</sup>For example, see Hersch Lauterpacht, "La théorie des différends non justiciables en droit international," *Recueil des cours* 34 (1930), 493–654; and, more generally, Jütersonke, "Hans J. Morgenthau and the Limits of Justiciability in International Law."

<sup>26</sup>Hans Kelsen, *Das Problem der Souveränität und die Theorie des Völkerrechts: Beitrag zu einer reinen Rechtslehre* (Tübingen, 1928), 320. Also see William E. Scheuerman, "A Theoretical Missed Opportunity? Hans J. Morgenthau as Critical Realist," in Duncan Bell, ed., *Political Thought and International Relations: Variations on a Realist Theme* (Oxford, 2009), 41–52; and Natasha Wheatley, *The Life and Death of States: Central Europe and the Transformation of Modern Sovereignty* (Princeton, 2023), 231–7.



much attention to peaceful change. Instead, they subsumed it either in discussions of existing procedures for resolving interstate disputes or in expectations of international law's evolution away from its presently "primitive" condition. Revealing, here, is Lauterpacht's treatment of the question in his influential 1933 treatise on international law. Identifying the task of "adjusting the functioning of law to the perpetual antinomy of change and stability, and of justice and security," as "one of the central problems of legal philosophy," Lauterpacht went on to advise readers not to "foreground" the "problem of peaceful change" but instead to maintain international law's focus on "its essential, as distinguished from its minor, aspects." Lauterpacht effectively sidestepped the problem.<sup>27</sup>

On the eve of the United States' entry into the war in 1941, Morgenthau's project of promoting international law as an instrument for resolving political disputes or "tensions" between states had reached an impasse. The principal obstacle involved the unruly dynamics of international politics rooted in the determinative discretionary authority of sovereign states. These dynamics also left little room for peaceful change, a question he (and several of his European colleagues) alluded to but sidestepped. Ironically, it was a debate on peaceful change among US jurists during the 1930s that would offer Morgenthau a way out of his impasse.

## II

Scholars disagree on the nature of international legal thinking in the United States between the wars, and especially on the extent to which World War I and peacemaking marked a break with the pre-1914 period. One group of scholars emphasizes continuity, highlighting the enduring hold of a legalist or "peace-through-law" framework, loosely modeled on American constitutional and judicial experience, in which states voluntarily embraced international law as an instrument for regulating interstate relations. International law would progressively impose itself on international politics, substituting for war as a means of resolving disputes, at least among "civilized" peoples.<sup>28</sup> Another group, by contrast, questions whether prewar legalism survived the combined effects of total war, Wilson's hostility during the Paris peace conference, and the creation of the League of Nations, deemed a political more than a legal organization. This second group identifies a younger cohort of interwar jurists who, backed by well-endowed private foundations, worked to modernize international law by opening it to insights from other disciplines and by adapting it to the needs of an interdependent world in which a principled attachment to national sovereignty appeared

<sup>27</sup>Hersch Lauterpacht, *The Function of Law in the International Community* (Oxford, 1933), 248–50. For Kelsen see Hans Kelsen, "Les rapports de système entre le droit interne et le droit international public," *Recueil des cours* 14 (1926), 236–331, at 317–18; and Kelsen, *The Legal Process and International Order* (London, 1935), 14–15, 18–19.

<sup>28</sup>Francis Anthony Boyle, *Foundations of World Order: The Legalist Approach to International Relations, 1989–1922* (Durham, NC, 1999); Jonathan Zasloff, "The Jurisprudence of American Foreign Policy in the 1920's," *Yale Law Review* 102/7 (1993), 1689–1718; and Charles DeBenedetti, *Origins of the Modern American Peace Movement, 1915–1929* (Millwood, NY, 1978), 49–55. For international law and civilization see Anthony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge, 2005); and Koskenniemi, *The Gentle Civilizer of Nations*, 98–178.

outmoded. For these modernizers, international law had to catch up to the new realities of international politics.<sup>29</sup>

This section argues that if a break occurred it was in the 1930s, a period far more consequential for international legal thinking in the United States than the world war or peacemaking. During the 1920s jurists endorsed an updated but largely unaltered version of the prewar legalist framework, preserving a consensus that masked differences regarding international law's ultimate reach. During the 1930s, however, the issue of peaceful change fragilized this consensus, galvanizing a debate with far-reaching implications for understandings of the relationship between international law and international politics.

In the wake of peacemaking, American jurists reaffirmed their faith in the promise of international law. The rule of law would spread gradually but surely over interstate relations, with more and more disputes falling under its pacifying compass. Addressing the American Society for International Law (ASIL) in 1925, Charles Evans Hughes, a former Supreme Court justice and Secretary of State (and current ASIL president), affirmed international law's progressive march: "despite all setbacks and however slow, there is a forward movement which ultimately will bring us to the paths of peace." Through patient recourse to law's "instrumentalities of justice," states would strengthen the collective "law-abiding sentiment" rooted in mutual interests, justice and voluntary consent, heralding the "reign of law, as distinguished from the rule of might."<sup>30</sup> If Hughes belonged to an older generation, younger colleagues echoed his sentiments. In 1921 Charles Fenwick, a professor at Bryn Mawr college and ASIL stalwart, envisaged an international law "for all the subjects that come up in the relations between nations," together with a future in which states "submit all matters of an international character to the rule of law." Three years later, at the ASIL's annual congress, Fenwick assured his colleagues that the "history of international law in the past shows the gradual widening of its scope to include questions which were at one time regarded as purely political."<sup>31</sup>

This seeming consensus on law's ongoing march papered over differences regarding the nature of political and legal disputes—the subject at the center of Morgenthau's prewar project. Reflecting what Marcus Payk describes as the profession's "conservative legalist" orientation, some jurists, among them titans such as Elihu Root and James Brown Scott, presumed that clear distinctions existed between the two types of dispute. While trusting in international's law expanding

<sup>29</sup>Benjamin Allen Coates, *Legalist Empire: International Law and American Foreign Relations in the Early Twentieth Century* (New York, 2016); Katharina Rietzler, "Fortunes of a Profession: American Foundations and International Law, 1919–1939," *Global Society* 28/1 (2014), 8–23; Stephen Wertheim, "The League That Wasn't: American Designs for a Legalist–Sanctionist League of Nations and the Intellectual Origins of International Organization, 1914–1920," *Diplomatic History* 35/5 (2011), 797–836; and Hatsue Shinohara, *U.S. International Lawyers in the Interwar Years: A Forgotten Crusade* (Cambridge, 2013).

<sup>30</sup>Charles Evans Hughes, "The Development of International Law," *Advocate of Peace through Justice* 87/6 (1925), 344–53, at 344, 346–7, 353.

<sup>31</sup>Charles G. Fenwick, "Law the Prerequisite of an International Court," *Annals of the American Academy of Political and Social Science* 96/1 (1921), 118–23, at 121; Fenwick, "An Outline of the Problems Presented in the Further Development of International Law," *Proceedings of the American Society of International Law at Its Annual Meeting (1921–1969)* 17 (26–8 April 1923), 47–52, at 51.

reach, they believed that a core of political (nonjusticiable) disputes would always remain, a belief rooted in an attachment to the principle of national sovereignty as well as in the more practical desire to protect the United States' freedom of action. In Paris in 1919 American legal advisers thus supported compulsory arbitration, but only for a defined set of subjects, which they contrasted with the seemingly open-ended political commitments of the League of Nations' Covenant. For these jurists, international law would play a valuable but circumscribed function in interstate relations.<sup>32</sup> Other jurists, such as Fenwick, less impressed by the principle of national sovereignty in what they understood to be an increasingly interdependent world, resisted the idea of a core of interstate disputes lying forever beyond international law's realm. For them, all disputes, in theory at least, could become legal ones as international law developed.

During the 1920s these differences remained latent. At the ASIL's annual meeting in 1924, whose principal topic of discussion concerned the "distinction between legal and political questions," the participants tacitly agreed not to press matters. Summing up prevailing opinion, James Garner, a University of Illinois professor, dismissed attempts to "define or classify" political and legal disputes as "futile," adding, "it is much easier to feel the distinction than it is to define it."<sup>33</sup> That the resulting agreement held for the remainder of the decade is apparent from attitudes to the Permanent Court of International Justice (PCIJ), established under League auspices in 1920. Most ASIL members supported the failed bid for US membership, a collective position whose appeal reflected the absence of mandatory and binding arbitration as well as the presumed inclusion of opt-out clauses—clauses which ultimately proved unacceptable to other states. Even so committed a PCIJ advocate as Manley Hudson, a Harvard law professor who would be appointed to the court, was careful to temper expectations. The PCIJ, Hudson wrote in a review of its work in the early 1930s, "has merely continued a process of international adjudication which began to be developed during the last century." Having "laid the foundation for its law and procedures," the PCIJ, he blandly forecasted, "will continue to build [on them] through the coming years."<sup>34</sup>

By the early 1930s, however, the consensus on law's progressive march—and its corollary, the tacit agreement not to insist on distinctions between political and legal disputes—had begun to fray. A primary cause was the question of peaceful change, which quickly became a pressing one for American jurists. No "problem" loomed larger, Clyde Eagleton, a New York University law professor and ASIL regular, remarked in 1932, than that of "peaceful change," for "if there is no other way to change an unsatisfactory situation, it will be changed by force, or

<sup>32</sup>Marcus M. Payk, *Frieden durch Recht? Der Aufstieg des modernen Völkerrechts und der Friedensschluss nach dem Ersten Weltkrieg* (Oldenbourg, 2018), 116–40, 268–82; and Coates, *Legalist Empire*, 152–76. For the prominence of national sovereignty in interwar international law see David Kennedy, "International Law and the Century: History of an Illusion," *Nordic Journal of International Law* 65/3–4 (1996), 385–420. But also see Natasha Wheatley, "Spectral Legal Personality in International War: New Ways of Being a State," *Law & History Review* 35/3 (2017), 753–87.

<sup>33</sup>James Garner quoted in *Proceedings of the American Society of International Law at Its Annual Meeting (1921–1969)* 18 (24–6 April 1924), 74–5.

<sup>34</sup>Manley Hudson to Root, 3 Oct. 1933, with attachment, "A Treatise on the Permanent Court of International Justice," 1934, Hudson, LOC, Elihu Root Papers, Box 150.

by violation of the unsatisfactory situation.” An article in the *AJIL* the same year singled out “peaceful change” as the “most important, and the most difficult, international problem.”<sup>35</sup> Testifying to the question’s visibility, in 1936 the ASIL placed peaceful change squarely on the agenda of its annual conference, with speakers asked to comment on “International Law as a Hindrance and as an Aid to Peaceful Change.” As one participant assured Philip Jessup, a Columbia University law professor and conference organizer, the “subject promises to be one of the most interesting and important that the Society has taken up in recent years.”<sup>36</sup>

To be sure, peaceful change was not new to the 1930s. During the previous decade, jurists had occasionally considered the question, most often in terms of treaty revision. Discussion tended to converge on three interrelated issues: the relative weight of the contending legal principles *pacta sunt servanda* (agreements must be respected) and *rebus sic stantibus* (mentioned above); the possibility of including provisions within treaties providing for their eventual revision; and the operability of Article 19 of the League’s Covenant, which pointed to the possibility of reconsidering the peace treaties if they became “inapplicable” or if their “continuance might endanger the peace of the world.”<sup>37</sup> During the 1930s, however, interest in peaceful change went from a focus on dispute settlement, principally centered on treaty revision (and that of the Versailles treaty in particular), to a preoccupation with the international order in general. The vital need of international politics, Eagleton commented in 1931, is not so much “treaty revision as the revision of the *status quo*,” a task he defined loosely in terms of ensuring a more just international order. Two years later, A. H. Feller, a Harvard law instructor, warned the ASIL that “no machinery for the peaceful revision of the *status quo*” existed, adding, “International law has been frozen into the mould of state sovereignty.”<sup>38</sup> In 1935 Jessup underscored the point at an international gathering: in the United States, he explained, treaty revision “is merely one of the very small aspects of the subject” of peaceful change.<sup>39</sup> International politics during the 1930s supercharged this shift from the specific to the more general, most obviously the growing truculence of Nazi Germany, Fascist Italy, and imperial Japan in signaling their dissatisfaction with the international status quo. For American jurists, the burning question became how to revise proactively and preemptively major elements of the international order—and what contribution international law could make to this endeavor—rather than the settlement of specific disputes between states.

<sup>35</sup>Clyde Eagleton, *International Government* (New York, 1957), 199; and John Fisher Williams, “Justiciable and Other Disputes,” *American Journal of International Law* 26/1 (1932), 31–6, at 36.

<sup>36</sup>“Program. The Role of the International Law in Peaceful Change. Thursday, April 23, 1935 [sic—1936]”; and Roden (Denison University) to Jessup, 23 Feb. 1936, LOC, Philip C. Jessup Papers, Box A73.

<sup>37</sup>See [https://avalon.law.yale.edu/20th\\_century/leagcov.asp#art19](https://avalon.law.yale.edu/20th_century/leagcov.asp#art19).

<sup>38</sup>Clyde Eagleton, “La révision des traités est-elle nécessaire,” *Esprit international* 61/5 (1931), 61–76, at 68; and A. H. Feller, “Machinery for the Preservation of Peace: Retrospect and Reorientation,” *Proceedings of the American Society for International Law at Its Annual Meeting (1921–1969)* 27 (27–9 April 1933), 182–5, at 183.

<sup>39</sup>“Minutes of a General Study Conference on ‘Collective Security’ held in London from June 3–7, 1935,” July 1935, Jessup, 74, LOC, Waldo G. Leland Papers, Box 83, ISC.

As conceptions of peaceful change broadened, two distinct positions emerged among jurists. One position found an outspoken proponent in Edwin Borchard, a well-known Yale law professor. If Borchard is remembered at all today, it is as a vociferous opponent of involvement in an overseas war before 1941. In his scholarship, public writings, and advisory role for leading politicians such as Senator William Borah and Hiram Johnson, Borchard campaigned for strict US neutrality in any such war.<sup>40</sup> But Borchard also figured as a fervent advocate of peaceful change, a stance rooted in his understanding of the relationship between international law and international politics. Borchard embraced what would become known as power politics, construing international politics as a realm regulated far more by competition between sovereign nation-states than by law. “The competition of States,” he affirmed in a 1937 *AJIL* article, “is rooted in high politics, which knows but few rules”; law, he added the following year, “cannot dictate national policy, nor does it as yet have much control over the competition for prestige and power which is inherent in the international system. In other words, the bulk of those factors which make for conflict [between states] are political.” Moral considerations in policy were of secondary importance. As Borchard privately remarked, “International relations are too complex to admit of the criterion ‘right’ and ‘wrong’.”<sup>41</sup>

From early on, Borchard criticized the League, or what he derisively termed the “Geneva system” or “Geneva ideology,” insisting that it served as a fig leaf for power politics. The “so-called ‘League of Nations’” created by the peace treaty, he asserted in 1922, “is in essence little more than a disguised alliance to maintain the balance of preponderance of power, in the time-honored fashion of European politics.”<sup>42</sup> Along similar lines, Borchard deemed the principle of collective security inscribed in the League’s Covenant, which he attributed to Woodrow Wilson’s inept moralizing, to be fatally wrongheaded. In infusing international politics with a crusading fervor, collective security risked producing perverse effects: it would transform limited wars into general wars; would sanction perpetual war (“League wars”) in the name of peace; and, through the threat of sanctions, would heighten the likelihood of war by exacerbating rivalries between states.<sup>43</sup> Not surprisingly, the course of

<sup>40</sup>See Jens Steffek and Tobias Heinze, “Germany’s Fight against Versailles and the Rise of the American Realism: Edwin Borchard between New Haven and Berlin,” in Jens Steffek and Leonie Holthaus, eds., *Prussians, Nazis and Peaceniks: Changing Images of Germany in International Relations* (Manchester, 2020), 100–22; and Justus D. Doenecke, “Edwin M. Borchard, John Bassett Moore, and Opposition to American Intervention in World War,” *Journal of Libertarian Studies* 6/1 (1982), 1–34. For Borchard’s advising see Borchard to Borah, 12 April 1935, LOC, William E. Borah Papers, Box 412; Borchard to Borah, 13 July 1939, LOC, William E. Borah Papers, Box 522. For his advocacy of neutrality in general see Richard Kendall Herman, “Edwin M. Borchard and the Defense of Tradition American Neutrality, 1931–1941” (Ph.D. dissertation, Yale University, 1964).

<sup>41</sup>Edwin Borchard, “The Place of Law and Courts in International Relations,” *American Journal of International Law* 37/1 (1937), 46–57, at 47; Borchard, “Neutrality,” *Yale Law Journal* 48 (1938), 41; and Edwin Borchard to William T. Stone (Foreign Policy Association), 14 Nov. 1935, LOC, John Bassett Moore Papers, Box 69.

<sup>42</sup>Edwin M. Borchard, “United States as a Factor in the Development of International Relations,” in Edmund A. Walsh, ed., *The History and Nature of International Relations* (New York, 1922), 229–31, at 235.

<sup>43</sup>Edwin M. Borchard, “The Multilateral Pact for the ‘Renunciation of War’,” Williamston Institute of Politics, address, 22 Aug. 1928, LOC, John Bassett Moore Papers, Box 60; and Borchard, “Joining

international politics during the 1930s fortified Borchard in his convictions. The “contrivance of collective security,” he lectured the ASIL in 1936, “has brought the world collective insecurity on a scale hitherto unknown ... by reason of adopting force as the chief agency of peace.” In private, Borchard was scathing: “the debacle of the Wilsonian theories of the war and the resultant ideology of the League affords one of the most significant chapters in the long history of the ephemeral, occasionally permanent, triumph of propaganda and false idealism over truth and reason.”<sup>44</sup>

As a leading scholar and practitioner of international law, Borchard was not prepared to view the latter as inconsequential. Instead, like Root and Scott, he believed that international law served important yet also circumscribed functions. First and foremost, it helped to regulate numerous mundane facets of interstate relations, for example in the areas of commerce, health, and communication. It also offered various means (arbitration, mediation, and conciliation) to states which opted, voluntarily, to submit political disputes to peaceful resolution. Ideally, for Borchard, the use of these instruments would prove contagious, enlarging the realm of international law. “Here lies the great field for future development,” he ventured in 1937; “in time, the principles used in the adjustment of non-legal conflicts may, by reiteration, develop into rules of law.”<sup>45</sup> That said, given his understanding of international politics, any progress would be extremely slow and always incomplete. In truth, Borchard looked more to the past than to the future, to the period before 1914, which he depicted as a golden age in which international law worked discreetly to soften international politics’ sharp edges, including periodic interstate war. Neutrality in general, and US neutrality in particular, which Borchard presented as the country’s time-sanctioned policy reflecting perennial national interests, would contribute to this larger project by restraining the nature and scope of local wars.<sup>46</sup>

When it came to peaceful change, Borchard initially argued for revision of the peace treaties on the conventional grounds that their terms generated resentment in the defeated states, particularly Germany. The “most important step that could now be taken in that direction,” he penned in 1921, referring to preserving peace, “would be a fairly radical revision of the Treaty of Versailles which ... constitute[s] a standing invitation to war.”<sup>47</sup> While continuing to promote treaty revision, Borchard during the 1930s shifted gears, now placing peaceful change at the center of a systemic approach to international politics. The problem became less the

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League Sacrifices Best Interests of Nation,” *Yale Daily News*, 21 March 1919, Yale University Library, Manuscripts and Archives (hereafter YUL), Edwin Montefiore Borchard Papers, Series I, Box 119, Folder 1132. Also see Borchard, “The ‘Enforcement’ of Peace by ‘Sanctions,’” *American Journal of International Law* 27/3 (1933), 518–25.

<sup>44</sup>Edwin Borchard, “Sanctions v. Neutrality,” *American Journal of International Law* 30/1 (1936), 91–4, at 91; and Borchard to Philip Jessup, 24 May 1937, YUL, Edwin Montefiore Borchard Papers, Series I, Box 4, Folder 64.

<sup>45</sup>Borchard, “The Place of Law and Courts in International Relations,” 55.

<sup>46</sup>“Democracy and Foreign Policy,” Borchard lecture, 7 Feb. 1938, YUL, Edwin Montefiore Borchard Papers, Series I, Box 119, Folder 1132; and Edwin Borchard and William Potter Lage, *Neutrality for the United States* (New Haven, 1937).

<sup>47</sup>Borchard to Hudson, 25 Aug. 1921, Harvard Law School, Historical Special Collections, Manley O. Hudson Papers, Box 5, Folder 47.



peace treaties themselves than the recurring conflict between “status quo” or “have” states on the one hand and “revisionist” or “have-not” states on the other. By definition, the former sought to freeze the international status quo, a pattern confirmed by the victorious powers in 1919 which had created the “Geneva system” for precisely this purpose. Attempts to fix the status quo, however, invariably provoked tensions due to the continually evolving balance of power between states. Rising states, acutely aware of the international order’s bias against them, perceived themselves as “have-nots,” a perception that fueled revisionist ambitions. “The holding down of the *status quo*,” Borchard advised a State Department official in 1935, “may be even more improper and destructive than its change ... Under the present system volcanic outbursts will occur and are almost necessary.” He elaborated further in an article two years later:

The arrangements for holding down the *status quo* of 1919 presupposed its relatively satisfactory character. When it proved to be out of harmony with economic considerations or political facts, the attempt to enforce the disequilibrium was anything but constructive. If politics are to be institutionally controlled, the quest should be for instruments of ordered change, not for the enforcement of the *status quo*. The “enforcement of peace” is a contradiction in terms, rests on unsound premises, manifests confusion of mind, and will, it is believed, continue to end in a morass of failure.<sup>48</sup>

For Borchard, these dynamics underscored the urgency of peaceful change, of some means or process whereby the leading states proactively revised the international order.

The vexing question, however, was how to achieve peaceful change in practice. If peaceful change was primarily a function of politics, then international law could presumably provide little help. But it was unclear that politics could achieve much either. When not lamenting the absence “of simple decency, fairness, appeasement, and reconciliation” in interstate relations, Borchard pointed to the merits of concert or conference diplomacy among the great powers, predictably invoking pre-1914 precedents. Yet by his own analysis, status quo states were unlikely to undertake peaceful change willingly, while revisionist states could not be expected to be infinitely patient. Borchard, in fact, recognized that none of his vague ideas were likely to be effective, an assessment that undoubtedly contributed to his increasingly strident defense of US neutrality in the face of sharpening international tensions.<sup>49</sup> Unable to come up with a convincing response to the challenge of peaceful change, Borchard fell back on championing the appeasement policy identified with British prime minister Neville Chamberlain, despite its mounting unpopularity in the United States and despite privately admitting in 1938 that appeasement was too little and too late.<sup>50</sup>

<sup>48</sup>Borchard to R. Walton Moore (assistant secretary of state), 2 Nov. 1935, LOC, John Bassett Moore Papers, Box 69; and Borchard, “The Place of Law and Courts in International Relations,” 51.

<sup>49</sup>A good example is Borchard, “Neutrality.”

<sup>50</sup>Borchard to Jerome Frank, 16 July 1938, YUL, Edwin Montefiore Borchard Papers, Series I, Box 3, Folder 45.

In promoting peaceful change, Borchard found himself in a minority among jurists, a situation unlikely to temper his stridency.<sup>51</sup> Among those he locked horns with was Quincy Wright, who represented a more mainstream stance. A long-time University of Chicago professor, Wright figures among the founders of American IR, best remembered for his research into the causes of war; in 1942 he published *A Study of War*, a colossal work whose influence persists. During the 1930s, however, Wright, who held a chair in international law, principally distinguished himself as a supporter of the League of Nations and collective security—a group Borchard contemptuously referred to as the “uplifters.” Whereas “I see law as it is,” Borchard grumbled in 1940, “he [Wright] sees it as it ought to be, in his view, but presents it as if were now law.”<sup>52</sup> As much as any American jurist, Wright embraced the legalist framework outlined at the beginning of this section: international law should serve as a pillar of the League, which was itself the expression of the international “community” (or “family”) whose actualization he discerned in the forces working for global integration. Over time, interstate war would become obsolete both legally (outlawed by the 1928 Kellogg–Briand Pact and thus a crime) and in practice as the peaceful resolution of disputes became the sole conceivable option among member states. Indeed, states would function as the principal executors of international law—much as individual states within the United States enforced the constitution, federal laws, and treaties.<sup>53</sup>

Initially, Wright paid little attention to peaceful change, regarding it as a natural companion to the emerging international community he projected. But as interest in the question quickly gathered pace in the 1930s, Wright began to address peaceful change, framing it as a counterpart to collective security. International sanctions, he insisted to Raymond Buell, the Foreign Policy Association’s research director, must be accompanied by “adequate machinery to change the *status quo*.” Or, as Wright suggested to John Foster Dulles, a Republican foreign policy expert, there existed an “essential relationship between peaceful change and collective security.”<sup>54</sup> Yet however interdependent he claimed the two to be, Wright, like many of his colleagues, ultimately assigned priority to security/stability in view of the imperative need to rein in the revisionist states. “Collective security,” he affirmed in 1938, “is ... a prerequisite of peaceful change.”<sup>55</sup> At the same time, Wright sought to postpone any consideration of peaceful change by projecting its application into an indefinite future in which international relations had been transformed and in which war was no longer an instrument of state policy—and in which peaceful change had lost its urgency. Tellingly, he attached

<sup>51</sup>A principal ally was Borchard’s mentor, John Bassett Moore, an aging titan in semi-retirement by the 1930s. See John Bassett Moore, “An Appeal to Reason,” *Foreign Affairs* 11 (July 1933), 547–88.

<sup>52</sup>Borchard to Philip Jessup, 3 Dec. 1940, YUL, Edwin Montefiore Borchard Papers, Series I, Box 4, Folder 64.

<sup>53</sup>This was the subject of Wright’s dissertation, “The Enforcement of International Law through Municipal Law in the United States” (unpublished Ph.D. thesis, University of Illinois, 1915).

<sup>54</sup>Wright to Buell, 21 Sept. 1932, University of Chicago, Hanno Holborn Gray Special Collections Research Center (hereafter UoC), Quincy Wright Papers, Box B26, File 4; and Wright to John Foster Dulles, 29 Jan. 1940, Princeton University, Firestone Library, John Foster Dulles Papers, Box 18, Reel 4.

<sup>55</sup>Quincy Wright book review, *American Historical Review* 43/4 (1938), 826.

quasi-impossible conditions to any attempt at peaceful change, insisting that it be both a collective and a consensual enterprise, involving all concerned parties.<sup>56</sup>

Equally telling, Wright tended to retreat into abstraction when discussing peaceful change. Peace, he explained in a 1934 article, demanded the maintenance of a “dynamic equilibrium in the world community” between “security and change.” This dynamic, in turn, depended on the “art of peace engineering,” which, Wright elaborated, involved the “continuous measurement of the forces within the world tending toward disequilibrium,” as well as “the operation of devices for preventing the over development of such forces in normal times.” If the League of Nations alone could conceivably undertake this task, it was not the actual League but another, imagined one:

a League will be exceptionally necessary both to suggest and to put into effect equilibrating devices in such strenuous circumstances and also to substitute so far as possible the scientific method of conceptualizing the tensions as the consequence of abstract forces out of equilibrium rather than by the humanistic method of personifying the forces and attributing the tensions to unfriendly motives.<sup>57</sup>

However tempting it might be to poke fun at Wright’s abstractions, other jurists were hardly more precise or practical. In a 1937 study, Eagleton, having described peaceful change as “the most inadequate part of the League system,” called for the creation of “thoroughgoing international machinery” capable of revising “unjust situations.” Similarly, John Whitton, a Princeton law professor, described peaceful change as the “critical point” (*point névralgique*) of international politics, before going on to envisage the development of an “international organization” loosely modeled on the US Constitution. As he conceded, though, this could only be a “long-term project.”<sup>58</sup>

For all their differences, neither Borchard nor Wright (nor any other American jurist) provided persuasive answers to the challenge of peaceful change. Borchard considered the question vital but also one basically beyond international law’s compass. Not surprisingly, the inability to accommodate peaceful change confirmed his belief in international law’s limits when set against the realities of state-dominated power politics. “The control of law in international relations is confined to relatively minor matters,” Borchard admonished his fellow jurists in

<sup>56</sup>Quincy Wright, “Article 19 of the League Covenant and the Doctrine ‘Rebus Sic Stantibus,’” *Proceedings of the American Society of International Law at Its Annual Meeting* 30 (23–5 April 1936), 55–72. Also see his assessment of the Munich agreement in Wright, “The Munich Settlement and International Law,” *American Journal of International Law* 33/1 (1939), 12–32.

<sup>57</sup>Quincy Wright, “Is the League of Nations the Road to Peace?,” *Political Quarterly* 5/1 (1934), 92–106, at 96–8, 100; and Wright, *Where the League of Nations Stands Today* (Minneapolis, 1934), 22–4. For a still higher form of abstraction see Wright, “The Factors in World Equilibrium,” undated, UoC, Quincy Wright Papers, Box 78, Folder 18. A valuable discussion of this theme is in Daniel Gorman, “International Law and the International Thought of Quincy Wright, 1918–1945,” *Diplomatic History* 41/2 (2017), 336–61, at 342–51.

<sup>58</sup>Clyde Eagleton, *Analysis of the Problem of War* (New York, 1937), 62, 112; and John Whitton, “La règle ‘Pacta sunt servanda,’” *Recueil des cours: Académie de droit international* 49 (1934), 252–76, at 252–4.

1942.<sup>59</sup> If Wright envisaged a more active role for international law in peaceful change, it was principally through a League of Nations that did not and would not exist in any foreseeable future. During World War II, Wright threw himself into official and para-official efforts to design a revamped League endowed with greater authority and capabilities for a new postwar order, probing the possibilities of regionalism and federalism, frameworks popular at the time.<sup>60</sup> Perhaps because he soon recognized that any successor to the League would likely resemble its predecessor, Wright turned his attention to other possibilities for invigorating international law, including the promotion of individual rights, seen as a means of decentering the state.

More generally, during the war years, American jurists, under Manley Hudson's guidance, collectively reflected on the role of international law in international politics. Published in 1944 as the postulates, principles, and proposals of "the international law of the Future," the results of their reflections in some ways amounted to a reaffirmation of faith in the legalist framework dating back to the pre-1914 period. Yet they also announced a more modest understanding of international law's reach—a modesty apparent in the treatment of peaceful change. Given its visibility during the 1930s, peaceful change could not be ignored; at the same time, the prewar debate had underscored the absence of practical proposals. Caught between these two realities, Manley and his colleagues took refuge in generalities, invoking the need for a balance between stability ("an important factor in international relations") and change ("Orderly procedures for the readjustments which may be needed").<sup>61</sup> In commenting on the results to the ASIL, Frederick Dunn, a Yale professor and director of the university's Institute of International Studies, described peaceful change as both "an old friend" and an insoluble problem in a "world made up of a number of independent sovereign states."<sup>62</sup>

The choice of Dunn as a commentator was not fortuitous. In 1937 he had written a study of peaceful change published by the Council on Foreign Relations, a bastion of elite East Coast internationalism. Widely circulated in the United States (and abroad), the study, reflecting the far-reaching scope of the American debate, went beyond immediate policy issues to consider the nature of international politics. Significantly, Dunn judged the proposals discussed by jurists at the time—which he summarized as more and better "procedures"—to be grossly inadequate. For the latter to be effective, he remarked, states would have to be "more rational or

<sup>59</sup>"Meeting at World Peace Foundation. First Draft of Postulates (Edwin Borchard)," Borchard, undated but 1942, LOC, Philip C. Jessup Papers, Box A87.

<sup>60</sup>For Wright's federalism see Samuel Moyn, *Humane: How the United States Abandoned Peace and Reinvented War* (New York, 2021), 130–31, 143; and Gorman, "International Law and the International Thought of Quincy Wright," 340–42. Wright was particularly active in the Commission to the Study the Organization of the Peace, an influential semiofficial organization. See Talbot C. Imlay, *Clarence Streit and Twentieth-Century American Internationalism* (New York, 2023), 116–29.

<sup>61</sup>"Postulates of the International Law of the Future," *American Journal of International Law* 38 (April 1944), supplement, 63–71. Borchard participated briefly in the project, Wright more amply. Hudson recognized international law's limited reach in Manley O. Hudson, *International Tribunals: Past and Future* (Washington, DC, 1944), 235–54.

<sup>62</sup>Frederick S. Dunn, "Law and Peaceful Change," *Proceedings of the American Society of International Law at Its Annual Meetings (1921–1969)* 38 (1944), 60–62.

less nationalistic than they were,” adding coyly, “If they were, the procedures would not be necessary.”<sup>63</sup> That Dunn was asked to comment in 1944 on the work of Hudson’s group testifies not simply to his recognized expertise, but also to the imprint left on American jurists by the peaceful-change debate during the 1930s. From the beginning, the debate involved weighty questions about the nature of international law and international politics, as well as the relationship between the two. Still more to the point, the failure to identify practical means to revise peacefully the international order had the effect of highlighting the differences between international law and international politics, as well as international law’s limited reach over international politics. So viewed, it is hardly surprising that the two fields, which had overlapped during the interwar years, went their separate disciplinary ways in the United States after 1945.

### III

Morgenthau embodied the separate disciplinary paths taken by international law and international politics after 1945. Beginning his academic career as a legal theorist, Morgenthau switched perspectives, making international politics and not international law his focal point. This section amplifies the argument that peaceful change constitutes the pivot of this switch. That Morgenthau followed the peaceful-change debate among American jurists, and its denouement, is clear. Soon after arriving in the United States in 1937, he integrated the question of peaceful change into his work—itsself a sign of the debate’s visibility. In a 1938 Guggenheim fellowship application to study the relationship between international law and politics, Morgenthau included “peaceful change as a desired function of international law” among the principal subtopics. During the war, he openly acknowledged international law’s inability to accommodate peaceful change. In a 1942 book review in the *AJIL*, for example, Morgenthau identified peaceful change as a problem whose solution must be sought in the “context of power politics.”<sup>64</sup> Morgenthau’s interest in peaceful change is also discernible in his reaction to E. H. Carr’s *The Twenty Years’ Crisis*, published in 1939. Often considered an IR landmark, the book grounded a determined defense of appeasing the dictator states in a polemic against interwar international “idealism” and, more largely, in an analysis of international politics structured around the perennial competition between have (status quo) and have-not (revisionist) states. Morgenthau was clearly attracted to Carr’s book, assigning it as required reading in his IR course in 1943–4 at the University of Chicago. Later, as is well known, he would criticize Carr for ignoring moral and ethical considerations, but this arguably had less to do with the analytical framework of *The Twenty Years’ Crisis* than with Carr’s Cold War philo-Sovietism.<sup>65</sup>

<sup>63</sup>Frederick S. Dunn, *Peaceful Change: A Study of International Procedures* (New York, 1937), 125–26.

<sup>64</sup>Morgenthau, “Plan for Work”, John Simon Guggenheim Memorial Foundation, fellowship application, LOC, Hans J. Morgenthau Papers, Box 31; and Morgenthau book review, *American Journal of International Law* 36/2 (1942), 351–2.

<sup>65</sup>“International Relations—(Morgenthau) Lecture 1—September 27, 1943,” LOC, Hans J. Morgenthau Papers, Box 77, Folder 8. Favorably comparing the *Twenty Years’ Crisis* with a subsequent study of Soviet policy, in 1948 Morgenthau deplored Carr’s “intellectual and moral degeneration.” See Morgenthau to Edward Mead Earle, 21 Sept. 1948, LOC, Hans J. Morgenthau Papers, Box 18, File 5.

Intriguingly, once in the United States Morgenthau cultivated relationships with Borchard and Wright, two of the most prominent participants in debates on peaceful change. Morgenthau owed his initial position at the University of Chicago to Wright, whom he replaced in 1943 on a temporary basis following Wright's leave of absence for wartime work. Morgenthau was hired to teach Wright's courses, including one on IR (mentioned above), which he would regularly give over the years—and whose lectures would become the basis for *Politics among Nations*.<sup>66</sup> Equally pertinent, Morgenthau wove elements of the peaceful-change debate into his lectures, including the limits of international law to settle interstate political disputes, the distinction between status quo and revisionist states, the ever-shifting distribution of power among states, and the ultimate impossibility of preserving the international status quo. In the 1949 version of the course, Morgenthau referred directly to the impact of the peaceful-change debates. “[M]uch thought has been given to what is generally called peaceful change” during the interwar years, he observed, adding that the effort had usefully highlighted salient aspects of international politics even if it had produced no practical results. The debate, Morgenthau pronounced, had displayed the fatal weakness of peaceful change, which lies “in the practical difficulties, if not impossibility, of devising instrumentalities by which sovereign nations can be forced to adapt their power and their legal status and their policies to demands for change advanced by other nations.”<sup>67</sup>

But if he owed his academic position to Wright, Morgenthau was intellectually more drawn to Borchard. To be sure, the two did not agree on the specifics of foreign policy. Describing Borchard in 1937 as the “spiritual father” of isolationism, Morgenthau deemed the latter to be unworkable for the United States, if only for economic reasons. Similarly, Borchard could never accept Morgenthau's contention that the future of neutrality depended on contextual factors, such as the evolving nature of warfare.<sup>68</sup> Nevertheless, the two shared certain affinities, most notably an appreciation for that most basic element of realism: “power politics.” “I agree thoroughly with you,” Borchard professed in spring 1941 in response to an essay Morgenthau had sent him, “on the misconceived hopes of those alleged liberals who thought to produce in international affairs a deliberative consideration of common problems analogous to that which prevails in a democratic state.” These “alleged forward-looking people,” he added, “forgot ... everything that is worth knowing about international relations.” Morgenthau's reply was equally evocative:

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Also see William E. Scheuerman, “Was Morgenthau a Realist? Revisiting *Scientific Man vs. Power Politics*,” *Constellations* 14/4 (2007), 506–30, at 517.

<sup>66</sup>Before receiving the University of Chicago offer, Morgenthau had accepted a temporary position from another participant in the peaceful change, Frederick Dunn, the director of Yale's Institute for International Studies. See Dunn to Morgenthau, 6 Aug. 1943, LOC, Hans J. Morgenthau Papers, Box 89, Folder 7.

<sup>67</sup>“International Politics,” Lecture 26, 125–6, LOC, Hans J. Morgenthau Papers, Box 78, Folder 3. Copies of Morgenthau's earlier lectures are in *ibid.*, Box 77, Folders 8–9.

<sup>68</sup>“Amerikanische Aussenpolitik und öffentliche Meinung,” 1937, 5, LOC, Hans J. Morgenthau Papers, Box 96. For neutrality see Hans Morgenthau, “International Affairs: The Resurrection of Neutrality in Europe,” *American Political Science Review* 33/3 (1939), 473–86; and Morgenthau, “The Problem of Neutrality,” *University of Kansas City Law Review* 7/2 (1938–9), 109–28. Borchard agreed to write letters of recommendation for Morgenthau after his arrival in the United States as part of his larger efforts to aid émigré scholars. See Kyle Graham, “The Refugee Jurist and American Law Schools, 1933–1941,” *American Journal of Comparative Law* 50/4 (2002), 777–818.



"I am happy to find that your comment on the basic problems of foreign policy coincides substantially with what I am trying to say in my study."<sup>69</sup>

The significance of this exchange needs to be seen in the dual context of Borchard's conspicuous contribution to the peaceful-change debate among American jurists and of Morgenthau's project in international law. Most obviously, the debate confirmed that peaceful change constituted a fraught and, indeed, insoluble problem for international law. Equally important, if not more so, Borchard's position in the debate outlined how peaceful change could provide a framework for international politics if one were prepared to abandon the vantage point of international law. Deeply invested in the latter, Borchard could not do so; but Morgenthau, whose attachment to international law was weaker from the beginning, could—and would.<sup>70</sup> The argument is not that Morgenthau appropriated (or misappropriated) Borchard's ideas wholesale, and still less that he abandoned his European intellectual baggage in the process. Rather, it is for the importance of context. In 1941 the two men recognized that they shared certain affinities, a recognition which reflected the visibility of the peaceful-change debate among jurists as well as Borchard's prominent role in it. Still more to the point, the debate—and especially Borchard's position—pointed to a solution to the impasse that Morgenthau had reached by 1940 or so with his project for international law.

Further and striking evidence for the importance of the peaceful-change debate for Morgenthau comes from *Politics among Nations*, his long-gestating "treatise" on international politics.<sup>71</sup> Given its status as a foundational text for realism, the book has received considerable scrutiny, with scholars offering differing and sometimes competing interpretations. Morgenthau's revisions to successive editions certainly did little to clarify matters.<sup>72</sup> Yet the debate on the book's meaning notwithstanding, the prominence of peaceful change in the first edition is impressive. Although peaceful change is the explicit topic of only one brief chapter (Chapter 29), elements of the interwar debate appear throughout *Politics among Nations*. Indeed, they lie at its heart, structuring the analysis. International politics, Morgenthau insisted, are driven by the "struggle for power" between status quo and imperialist states, with imperialism defined as a policy "which aims at the overthrow of the status quo, at a reversal of the power relations between two or more nations." While famously rooting this drive for power in human nature (or "bio-psychological drives"), Morgenthau devoted far more attention in the book to the dynamics of international order—and especially to the unstable distribution or balance of power. Power relations between states, he explained, are "by their very nature

<sup>69</sup>Borchard to Morgenthau, 25 June 1941, and Morgenthau to Borchard, 10 July 1941, YUL, Edwin Montefiore Borchard Papers, Series I, Box 11, Folder 127.

<sup>70</sup>Jütersonke rightly includes the prewar Morgenthau as among those he calls "reluctant jurists." See his "Kelsen and Morgenthau in America," 76.

<sup>71</sup>Some scholars take Morgenthau's 1946 book *Scientific Man vs. Power Politics* to be more indicative of his thinking. Lucian Ashworth, for example, calls it a "field-defining text" in his *A History of International Thought* (London, 2014), 257. But Morgenthau clearly did not consider the book a treatise on international politics.

<sup>72</sup>For a helpful discussion, see Nicolas Guilhot, "Politics between and beyond Nations: Hans J. Morgenthau's *Politics among Nations*," in Henrik Bliddal, Casper Sylvest, and Peter Wilson, eds., *Classics of International Relations: Essays in Criticism and Appreciation* (London, 2013), 69–79.

subject to continuous change. They are essentially unstable. Since the weights which determine the relative position on the scales tended to change continuously by growing either heavier or lighter, whatever stability the balance of power may achieve must be precarious and subject to perpetual adjustments in conformity with intervening changes.” In seeking to preserve the existing power relations, status quo states exploited various resources, not least international law, which Morgenthau described as “primarily a static social force” which defines “a certain distribution of power and offers standards and processes to ascertain and maintain it in concrete situations.” In response, imperialist states, dissatisfied by definition with the reigning international order, inevitably challenged the status quo powers, fostering recurring tensions and even war. “This grouping of nations into those in favor of the status quo and those opposed to it,” Morgenthau pronounced, constituted the “elemental pattern of international relations,” while the “antagonism” between the two categories fueled “the dynamics of the historical process.”<sup>73</sup>

Morgenthau presented the interwar years as a textbook case of the unstable dynamics of international politics. The victor states had dictated peace treaties to the defeated in 1919 and then sought to safeguard the resulting international order (or power relations) through a combination of political and legal means, most notably the League of Nations. Echoing Borchard, Morgenthau blasted collective security as profoundly misguided both because it risked escalating local conflicts into general wars and because it generated tensions through a willful ignorance of the dynamic nature of power relations between states. The “attempt to freeze the particular status quo by means of collective security [was] in the long run doomed to failure,” he declared. Interestingly, unlike with Borchard, the critique of collective security did not prompt Morgenthau to endorse (retrospectively) the appeasement of Germany, Italy, and Japan in the 1930s; instead, he insisted that these countries were unappeasable—that they sought nothing less than the overthrow of the international order and its underlying power distribution/balance.<sup>74</sup> Whether this was a potential quality of all frustrated revisionist powers or something unique to those of the 1930s, Morgenthau left unclear.<sup>75</sup>

In the end, Morgenthau found himself in a similar bind to Borchard. The instability of power relations, which produced and reproduced the patterned antagonism between status quo states and imperialist states, underscored the need for peaceful change. However, in a “society of sovereign nations”—in which the dynamics of power relations shaped the perceived interests of states and thus their membership in the status quo or revisionist/imperialist camps—peaceful change would always be elusive. To underscore the point, Morgenthau compared the domestic with the international sphere, drawing a sharper distinction than he did in his prewar writings: multiple “mechanisms for peaceful change” operated in the former (elections, legislatures, judicial system, enforcement provisions) but far less so in the latter. Effective peaceful change, by analogy, would require a

<sup>73</sup>Morgenthau, *Politics among Nations: The Struggle for Power and Peace* (New York, 1949), 27, 17, 131, 64, 332–3.

<sup>74</sup>*Ibid.*, 333, 35.

<sup>75</sup>Morgenthau’s ambiguity concerning the relationship between interwar appeasement and peaceful change arguably contributed to his above-mentioned ambivalence towards E. H. Carr.

world government or federation, something Morgenthau identified as an ideal yet roundly rejected as politically unfeasible in any measurable future. Admittedly, some scholars present Morgenthau as something of a closet world federalist, but this arguably downplays the heuristic intent of his interest: to underscore the urgency of focusing on what he considered immediate practical realities rather than on remote utopias.<sup>76</sup> For Morgenthau, the best hope for peace lay not in the chimera of peaceful change, and still less in world government, but in skilled diplomacy between states, which, by facilitating “minor adjustments” to the international order, might (or might not) keep at bay the dangerous power dynamics animating international politics.<sup>77</sup> So viewed, realism’s tragic nature becomes all too apparent: if efforts to preserve the international status quo were self-defeating and peaceful change was extremely difficult at best, then the future looked bleak indeed.

Peaceful change, a question vigorously debated by American jurists during the 1930s, was pivotal to Morgenthau’s shift from international law to international politics—a shift that paved the way for his emergence as a founder of realism after 1945. This is not to say that Morgenthau’s realism was “made in the USA” or that his European experience was unimportant. Instead, the argument is that Morgenthau’s project to forge a theory of international law, begun with his PhD in Germany, had reached an impasse by 1940 or so, and that the peaceful-change debate among American jurists during the 1930s provided a way out by allowing Morgenthau to transform what appeared to be a vexed problem for international law into a structuring element of an approach to international politics. There is, admittedly, no smoking gun: the case made here is a circumstantial one, resting on motive (Morgenthau’s impasse) and opportunity (a solution to the impasse) as well as on the remarkable fit between major elements of the American debate on peaceful change and *Politics among Nations*. From this perspective, the challenge is not to determine whether Morgenthau’s realism was more European or more American in origin, but to explain how the two political–academic milieus in which he operated, the first in Europe and the second in the United States, combined and interacted to produce *Politics among Nations*.

Realism, even more than *Politics among Nations*, is open to “multiple meanings.”<sup>78</sup> But however open-ended realism might be, Morgenthau contributed mightily to making peaceful change a fundamental component of what became known as classical realism, which established itself after 1945 as a leading paradigm in the United States for understanding international relations. And peaceful change remains so today. As Jonathan Kirshner, an eminent IR scholar, explains, for classical realists “changes in relative power, which ultimately derive from long-run variations in economic growth, are the mainspring of international political

<sup>76</sup>For example, see James P. Speer, “Hans Morgenthau and the World State,” *World Politics* 20/2 (1968), 207–27. Campbell Craig argues that the prospect of nuclear Armageddon prodded Morgenthau to take the world-state more seriously in later years. See his *Glimmer of a New Leviathan: Total War in the Realism of Niebuhr, Morgenthau, and Waltz* (New York, 2003), 66–8, 108–9.

<sup>77</sup>Morgenthau, *Politics among Nations*, 25, 350–60.

<sup>78</sup>Duncan Bell, “Introduction: Under an Empty Sky—Realism and Political Thought,” in Bell, ed., *Political Thought and International Relations: Variations on a Realist Theme* (Oxford, 2009), 1–25.

conflict ... A central problem in International Relations is addressing these changes to the balance of power, which historically has commonly been resolved by war.”<sup>79</sup> Kirshner offers a compelling case for a classical realism which, in the context of contemporary American debates, expresses itself as a plea for greater prudence in international politics on the part of the United States.

Realism’s purported lessons, however, reach beyond counsels of prudence. The American debates on peaceful change, it is worth underscoring, ended in an impasse. Neither Borchard nor Wright arrived at persuasive answers to the question of how to revise an international order by means other than war. In some ways, as *Politics among Nations* suggests, this impasse infused realism with reduced ambitions while also curtailing the space not only for international law but also for policy makers and policy making. After all, if the dangerous dynamics of international politics rooted in the perpetually fluctuating balance of power cannot be controlled but at best only (temporarily) managed, it becomes tempting for states and their leaders to contemplate worst-case scenarios. At the same time, Morgenthau (and other realists) tend to endow “statesmanship” with enormous and even existential importance. It is the almost superhuman combination of qualities of “diplomats and statesmen”—not simply their prudence but also their brilliance, subtlety, and discernment—which will maintain a balance between the imperatives of change and of stability and thus prevent the necessary revision of the international status quo from proceeding by way of war.<sup>80</sup> More generally, the peaceful-change debate and the impasse it reached helped to crystallize a binary understanding of international politics, with the dangerous dynamics of “power politics” between sovereign states (or anarchy) at one end and more or less quixotic visions of world government at the other. If nothing else, this understanding left foreign policy precariously suspended between the two poles, with little but the innate wisdom of leaders and their advisers to avoid disaster.

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<sup>79</sup>Jonathan Kirshner, *An Unwritten Future: Realism and Uncertainty in World Politics* (Princeton, 2022), 180.

<sup>80</sup>Like Borchard, Morgenthau looked backwards in time, to the early nineteenth-century Concert of Europe, for a model. See Morgenthau, *Politics among Nations*, 361.

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