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## Morgenthau, Law and Realism

Although widely regarded as the ‘founding father’ of realism in International Relations, this book argues that Hans J. Morgenthau’s legal background has largely been neglected in discussions of his place in the ‘canon’ of IR theory. Morgenthau was a legal scholar of German-Jewish origins who arrived in the United States in 1938. He went on to become a distinguished professor of Political Science and a prominent commentator on international affairs. Rather than locate Morgenthau’s intellectual heritage in the German tradition of *Realpolitik*, this book demonstrates how many of his central ideas and concepts stem from European and American legal debates of the 1920s and 1930s. This is an ambitious attempt to recast the debate on Morgenthau and will appeal to IR scholars interested in the history of realism as well as international lawyers engaged in debates regarding the relationship between law and politics, and the history of International Law.

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For my parents,

Elke and Manfred J. Jütersonke

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## Preface

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Why another monograph on Hans J. Morgenthau? That question, perhaps posed by many picking up this book, is indeed a legitimate one. Ever since his rise to fame in the 1950s with his textbook, *Politics Among Nations: The Struggle for Power and Peace*, plenty has been written on the ‘realist theory of international politics’ advocated therein. Revolving around the notion of the (national) ‘interest defined in terms of power’, Morgenthau’s work was for decades part of the standard repertoire of practically every introductory course in the field of International Relations, in both the anglophone world and beyond. Moreover, his outspoken views on Vietnam, nuclear deterrence and Middle East peace made Morgenthau a known quantity in foreign policy and media circles. Hans Morgenthau was, in many respects, one of the leading public intellectuals in the United States during the 1960s and 1970s.<sup>1</sup> The multitudinous secondary literature and commentary on the man and his ideas bears testimony to this status.

In short, the present text is a reaction to a recent revival, starting in the late 1990s, of the work of Morgenthau in the academic field of International Relations. With the Cold War over and the global cards reshuffled towards asymmetric warfare and invisible enemies, scholars began looking around for inspiration from the ‘classics’ to fill the apparent void left by a body of theory that was perceived as being of decreasing utility for the twenty-first century. Hans Morgenthau was one of those rehabilitated. Rereading the texts, his work appeared much more sophisticated than the crude

<sup>1</sup> He is not to be confused with his namesake Henry Morgenthau Jr (1891–1967), who served in Franklin D. Roosevelt’s administration and is best known for his 1944 ‘Morgenthau Plan’ of wanting to deindustrialize and partition post-war Germany into a series of agrarian statelets.

power politics privileged by standard interpretations of his thought, instead offering avenues for addressing issues of morality and ethics in debates on the global war on terrorism, for instance. Such normative considerations, it was argued, tended to be occluded by the more scientific neo-realist approaches that had originally replaced Morgenthau's 'human nature realism'. Yet while this revival of Morgenthau's work is undoubtedly merited and represents, as a whole, an important contribution to the 'disciplinary history' of the relatively new field of International Relations, it continues to mystify why the legal origins of Morgenthau's thought remain unstudied. Before rising to fame at the University of Chicago, Morgenthau was an aspiring legal scholar trying to make a name for himself in Frankfurt, Geneva, Madrid, New York and Kansas City. Bar a number of fragmentary exceptions, the recent literature on Morgenthau has not deemed it worthwhile to formulate – and elaborate upon – the fact that the realist thought of one of its 'founding fathers' was derived from debates that arose in the 1920s and early 1930s as a reaction to the predominant formalist norm-positivism of German and American legal theory. While these intellectual origins have been recognized, and expressed, by a number of scholars in the field of International Law, the consequences of such insights have yet to resonate in International Relations theory.

In a nutshell, Morgenthau's legal formalist heritage incited him to make repeated calls for greater emphasis on the 'reality' of international legal norms, a reality reflected in the restricted scope and weak normativity of the system of sanctions offered by international dispute settlement mechanisms and institutions. His popular American works published in the 1940s and 1950s constitute an attempt to make the convictions he held about the nature of law compatible with his new, non-legal audience. Morgenthau the émigré jurist faced the dual challenge of addressing a readership that was versed in a different literature and used different cultural reference points, and of having to move from the field of Law to Political Science. Works such as *Scientific Man vs. Power Politics* or *In Defense of the National Interest* cannot be understood without taking this institutional and ideational setting into account.

This book does not offer a radically different reading of Morgenthau that necessarily challenges existing, standard renditions of his thought. To be sure, those looking for instances of a

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rather crude realism that posits international politics as being a pure struggle for power waged by self-interested actors will have no trouble finding such statements in Morgenthau's writings. What I am interested in, however, is fleshing out *why* and *on what basis* Morgenthau came to take on the views that he did. As the following chapters will attempt to show, answering these questions requires a more accurate contextualization of the legal debates Morgenthau was engaged in prior to becoming the advocate of power politics for which he is remembered.

Writing another biography of Morgenthau is not the purpose of this monograph. Although being informed by, and at times drawing on, unpublished material from the Morgenthau archives in Washington, New York, Oxford and Geneva, this book does not attempt to give an exhaustive overview of Morgenthau's thought, his work, or of the man himself. It does not deal critically with the reception of *Politics Among Nations* in subsequent conceptualizations of scientific, structural and neo-realist approaches in International Relations theory. It does not analyse the reception of Morgenthau's realism in US foreign policy circles, and his influence on the likes of George F. Kennan and Henry Kissinger. It does not engage with Morgenthau's strong denunciation of the Vietnam War and the policies of the Johnson administration, and it does not address his at times contradictory views regarding nuclear weapons. What this monograph sets out to do is elaborate on the claim that a revival of Morgenthau's thought is neither particularly interesting nor an added value to the disciplinary history of International Relations if it continues to occlude the law debates within which his ideas were shaped.

The argument of the book can be boiled down to a number of central assertions. First, the Morgenthau remembered in the field of International Relations and in US foreign policy circles is the Morgenthau of the 'six principles of realism'. These were added, upon consultation with his editors, at the beginning of the second edition of *Politics Among Nations* in 1954 to make the book sell better (which it then did). Neither the first edition, nor anything else Morgenthau had written up to that point, contained elements of what was subsequently declared to constitute a 'realist theory of international politics'. Second, what Morgenthau originally meant



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by ‘realism’ was the introduction of a dose of ‘reality’ into the way inter-state disputes were conceptualized. The dominant doctrine of positivist legal formalism detracted from focusing on the underlying distribution of power inherent in any international dispute, and thus also on the empirical enforceability of international legal norms. Third, Morgenthau’s use of the term ‘legalism’ did not imply that international law was irrelevant to the study of international relations, but that it was pernicious to uphold a formalist legal doctrine that was only instrumentalized to suit the requirements of one or more superpowers seeking to depoliticize their underlying claims to ideational supremacy.

## Acknowledgements

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Writing a monograph is inevitably a somewhat lonely endeavour, perhaps even more so when the subject matter requires digging through archives and hunting down obscure references – rather than, say, engaging in anthropological field work on youth gangs in a Central American suburb. Important are thus those relatively rare moments of ‘coming up for air’, when certain individuals agree to listen to or read what must have often constituted nonsensical snippets of an argument that was probably as unclear to me as to those on the receiving end of the narrative. My three mentors who regularly put up with this were Keith Krause, Peter Haggemacher and Martti Koskenniemi, whose words of critique and encouragement, and unbelievable patience, shepherded me over the finishing line. It is to them that I owe the greatest thanks.

Much of the argument of the book revolves around hidden dialogues and implicit influences of one sort or another. The difficulties of pinning down such exchanges are once again apparent when reflecting on the list of scholars I myself was privileged enough to have had conversations with on a variety of aspects related to this monograph. Reconstructing the complete list would be impossible, but I would particularly like to mention and thank George Abi-Saab, Michael N. Barnett, Andrea Bianchi, Thomas J. Biersteker, Curt Gasteyger, Richard Ned Lebow, Joel H. Rosenthal, William E. Scheuerman, David Sylvan, Kenneth W. Thompson, Daniel Warner and Michael C. Williams for their comments, suggestions and encouragement.

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Finally, my gratitude goes out to my family, friends and colleagues, who, each in their own way, made the writing of this book possible. It could not have been achieved without you all.

## Note on the text

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While having also consulted the personal Morgenthau papers in the Leo Baeck Institute in New York, the files of the Academic Assistance Council at the Bodleian Library in Oxford, and various institutional dossiers at the Graduate Institute of International and Development Studies in Geneva, all the unpublished material cited in the following chapters can be found in the Manuscript Division of the Library of Congress, Washington, DC. The collection, entitled *Hans J. Morgenthau Papers*, is divided into numbered containers and will be referenced as ‘HJM-Container 110’, for instance, in the footnotes.

Unless otherwise stated, all translations from German and French are my own. Where an English translation of the text does exist, yet I felt the need to translate the original text slightly differently, I have added ‘my translation, OJ’ to the reference. In a few instances, when the original wording is crucial, I have included the German or French text so that the reader may have a direct comparison.

Although significantly rewritten since, a few sections of Chapters 2, 3 and 6 first appeared in Jütersonke, ‘Hans J. Morgenthau on the Limits of Justiciability in International Law’, *Journal of the History of International Law*, 8:2 (2006), pp. 181–211, and in Jütersonke, ‘The Image of Law in *Politics Among Nations*’, in M. C. Williams (ed.), *Realism Reconsidered: The Legacy of Hans J. Morgenthau in International Relations* (Oxford University Press, 2007), pp. 93–117. A few lines of two earlier review articles published in the journal *Cooperation and Conflict* – Vol. 40 (2005), pp. 233–41 and Vol. 41 (2006), pp. 463–9 – can also be found in Chapter 1. Thanks go to Brill Publishers, Oxford University Press and SAGE Publications for their permission to draw on this material.