

CHAPTER FIFTEEN: CRITICAL PERSPECTIVES

Pages 347-349

A. Political Science

Assigned Reading: *International Law Anthology*, pp. 381-84.

NOTES AND QUESTIONS FOR CLASSROOM DISCUSSION

1. Why do you think political scientists use the phrase "political realism" when they refer to power politics? Is it a legacy of Machiavelli? Why is power necessarily "real"? Do people think power is real because they can see it, or feel its effects? Or are they only imagining that they feel its effects? Consider: do most people obey the law because if they didn't the police would arrest them and throw them in jail? Or do most people obey the law because they think they should obey the law, leaving the police with the manageable job of arresting those few who don't think they should obey the law? If a sense of *wanting* to obey the law is more important in society than a sense of *fearing what would happen* if one doesn't obey the law, then what is truly real—the power of the police, or the normative feelings of the majority of the public?

2. When it comes to international law, the sense of the "real"—wars, military conflicts, threats, the whole machismo nine yards—seems to have inveigled students of political science since the end of the Second World War. At that time Hans Morgenthau wrote his hugely influential political science text, *Politics Among Nations*. Although Morgenthau had been an international lawyer in Vienna, he joined the Political Science Department of the University of Chicago when he emigrated to the United States to escape the Nazis. As a political science professor, he found that undergraduate students were impressed when he ridiculed the norms of international law, the moral pieties of Woodrow Wilson, the do-gooders on the international scene who wound up as oppressed victims. More than anyone since Machiavelli, Morgenthau coupled the terms "realism" and "power politics" inextricably in the minds of an entire generation of post-war students. International lawyers were not impressed, but they were marginal figures at best in the Polysci departments of colleges in the 1950s and 1960s. The true political scientists were followers of Morgenthau; they believed in Theodore Roosevelt's aphorism "speak softly and carry a big stick." For what reasons do Francis Boyle and Anne-Marie Slaughter Burley feel that political realism has had its day in the sun, and that new theories of international behavior are presently taking its place?

3. What role does the transparency of states play in the Liberal international relations theory? Does the Liberal agenda seek to eliminate states as the primary actors in international activities?

4. What are the fundamental assumptions of Liberal theory? Is it "realistic" to assume that states can have preferences and desires? Or are these problematic, considering the artificial nature of the state? Or are the Liberals arguing that the state is not artificial?

5. How does the Liberal theory fill in the gaps of the Institutionalist theory?

6. What are Louis Henkin's "submerged rules of the game"? How can Liberal theory change the rules?

7. How can Liberal theory reduce the need for the notion of state sovereignty?

8. Why have political scientists moved from Realism to Institutionalism to Liberalism? Is it simply that political scientists—initially misled by Morgenthau—have taken all this time to understand that international law plays a major role in the behavior of nations? If you took a course in international relations as an undergraduate, how would you describe the attitude of your professor toward these questions? Did you agree with your professor at the time? Do you agree now?

B. Natural Law

Assigned Reading: *International Law Anthology*, pp. 384-86.

NOTES AND QUESTIONS FOR CLASSROOM DISCUSSION

1. What is the source of legal authority according to positivism? According to natural law?

2. What does Anthony D'Amato assert to be the meaning of law? Of natural law? How is international law like natural law? Do you disagree with him? (If you are a student in his class, you *should* disagree with him.)

C. The Systems Critique

Reading Assignment: *International Law Anthology*, pp. 386-88.

NOTES AND QUESTIONS
FOR CLASSROOM DISCUSSION

1. What is the systems approach? Do Charles Kiss and Dinah Shelton believe that the systems approach can help with the new problems in international law? Do you agree?
2. What areas of international law appear to have begun implementing a systematic approach?

D. Critical Legal Studies

Reading Assignment: *International Law Anthology*, pp. 388-89.

NOTES AND QUESTIONS
FOR CLASSROOM DISCUSSION

1. How do behaviorists fall into the same circular argument trap as the positivists and naturalists?
2. Can a critical legal scholar like James Boyle believe that international law is real?

E. Feminist Perspectives

Reading Assignment: *International Law Anthology*, pp. 389-400.

NOTES AND QUESTIONS
FOR CLASSROOM DISCUSSION

1. What is the view of Third World feminists? How does the Third World view differ from that of western feminists? What central concern and goal do they share? Do you think the feminist movement should be concerned with the needs of the most oppressed women? Or with the needs of the most privileged women?
2. What is the international feminist goal?
3. Do you agree that international organizations exclude women's voices and perpetuate the "international invisibility of women"?
4. What is the public/private dichotomy based on gender? How is it built into the legal system? How is the dichotomy embedded in international law? Does it prevent international law from dealing with women's needs?
5. How has the international community dealt with the problem of trafficking in women?
6. What are the problems associated with a rights-based approach to advancing women's equality? Do you think a rights-based approach is better than nothing? Does a rights-based approach hurt the feminist movement more than it helps?
7. How can protecting the family harm some women?
8. What is liberal feminism? What is radical feminism? Do you think Hilary Charlesworth's, Christine Chinkin's, and Shelley Wright's views are liberal or radical? Why?
9. What is Fernando Teson's response to the argument that women are underrepresented in international organizations? Is he addressing the precise issues that Charlesworth, Chinkin and Wright raised? Or does he miss the point?
10. In Teson's discussion of democratic states, does he address the possibility that the whole structure of the system can be so biased that it is unlikely that women will be elected or appointed to international positions?
11. What are Teson's objections to the radical theory? Does Teson argue that because oppression does not follow from the definition of the word "state," the state can not be inherently oppressive of women?
12. Do you think states should be liable in international law if women are abused by private individuals in their own state? What if there are laws preventing abuse of women, but they are not enforced vigorously? What if the state takes reasonable steps to prevent abuse of women? Who will define what is "reasonable" in this context? Would holding a state liable for the abuse of women when the state has made a "reasonable" effort to prevent the abuses amount to strict liability? Or would it give states the incentive they need to truly protect women? What would be the cost of a perfectly effective system of crime control?
13. Do you think choices are socially determined? If so, to what extent? Does Teson's point that the formulation of the radical feminist theory undermines its central premise modify your view? Or is there a counterargument?
14. What arguments does Teson make to challenge the wisdom of tearing down the public/private distinction?

15. Teson hypothesizes that radicals do not want a public/private distinction because they do not care for human rights or freedom. Do you think this reflects the radical feminist view? Does this address the radicals' argument that traditional human rights are male rights?

16. Why shouldn't the radical view of feminism be radical? Why shouldn't it call for the rebuilding of the whole system to end the oppression of women--an uncomfortable and scary proposition? Does the rhetoric of radical feminism give a boost to the rhetoric of liberal feminism? Or do they work at cross purposes with each other?

17. Why do most liberals, who are not radicals--including many feminists--choose to work within the existing system to achieve gradual change? Why should clearly oppressed groups, like women in some Arab nations, prefer their own system to one that might seem to promise them greater liberty? Would Arab women be better served by radical feminism than by liberal feminism?

18. After reading both articles, has your view of feminism changed? Do you think the international system is biased against women? If so, how would you go about changing it?