War, Law & Liberal Thought: The Use of Force in the Reagan Years

David P. Fidler
Indiana University Maurer School of Law, dfidler@indiana.edu

Follow this and additional works at: https://www.repository.law.indiana.edu/facpub

Part of the International Law Commons, International Relations Commons, and the Military, War, and Peace Commons

Recommended Citation
Fidler, David P., "War, Law & Liberal Thought: The Use of Force in the Reagan Years" (1994). Articles by Maurer Faculty. 754.
https://www.repository.law.indiana.edu/facpub/754

This Article is brought to you for free and open access by the Faculty Scholarship at Digital Repository @ Maurer Law. It has been accepted for inclusion in Articles by Maurer Faculty by an authorized administrator of Digital Repository @ Maurer Law. For more information, please contact rvaughan@indiana.edu.
WAR, LAW & LIBERAL THOUGHT: THE USE OF FORCE IN THE REAGAN YEARS

David P. Fidler*

I. INTRODUCTION

The Reagan administration has been severely criticized for the attitude it displayed towards international law on the use of force. Perhaps excluding the Vietnam years, no previous American administration has come under such heavy and repeated attack for its attitude concerning the role of international law in American foreign policy. More than a few actions have been criticized; many attacks explicitly accused the Reagan administration of treating the international legal rules on the use of force as unimportant. The conventional view appears to be that the Reagan administration has been weighed in the balance of international law and justice and found wanting.

The first purpose of this article is to analyze critically the conventional wisdom about the Reagan administration's handling of the international law on the use of force. My analysis proceeds in two parts. First, I examine the conventional critique of the Reagan administration's handling of the use of force, as well as the tradition of liberal thought on international law — the liberal progressive tradition — that inspires that critique (Part I). Second, I explore the tradition of liberal thought on international law — the liberal realist tradition — that informs the Reagan administration's perspective. In comparing the two traditions, I argue that the conventional wisdom about the Reagan administration's perspective on the international law on the use of force not only misunderstands the administration's position but also fails to do justice to the liberal progressive tradition (Part II). For clarity and focus, I will concentrate on the Reagan administration's policy towards Nicaragua. Of all the events in the

* David P. Fidler is an associate with Stinson, Mag & Fizzell, P.C.; B.C.L., Oxford University (1991); J.D., Harvard University (1991); M.Phil., Oxford University (1988); B.A., University of Kansas (1986).

1. See, e.g., Paul H. Kriesberg, Does the U.S. Government Think That International Law is Important?, 11 Yale J. Int'l L. 479 (1986).

2. The Reagan administration came under attack on international legal issues other than the use of force. Two other very controversial areas that will not be dealt with in this article are the law of the sea and human rights. See Allen Sultan, The International Rule of Law under the Reagan Administration, 10 U. Dayton L. Rev. 245 (1985) and Louis Henkin, Use of Force: Law and U.S. Policy, in Right v. Might: International Law and the Use of Force 37, 68 n.28 (1989) [hereinafter Right v. Might].
Reagan years that touched upon legal issues on the use of force, the Nicaraguan policy produced the sharpest disagreement and discord, as well as a rare and controversial ruling on use of force law by the International Court of Justice (ICJ).

The second purpose of the article is to examine whether the Reagan administration's policies against Nicaragua accord with the liberal realist tradition in theory and practice (Parts III and IV). The third purpose of the article is to transcend the policies of a specific administration to explore the unsettling challenge the use of force poses for liberal thought. I delve into the traditions of liberal thought on international law because the "great debate" about international law and the use of force in the Reagan years cannot be properly understood without going back to the philosophical and historical roots of both sides in the debate. As the Washington Quarterly noted, the 1980's left "both Democrats and Republicans in a quandary about the basic relation of international law to the national interest and to the use of force in diplomacy."

My analysis, to a large extent, goes back to the basics of the relationship between the use of force, international law, and liberal thought on international politics. What follows covers familiar ground, but familiarity cannot disguise that the ground remains controversial, complex, enigmatic, and disturbing.

---


5. Force, U.S. Diplomacy, and International Law, Wash. Q., Autumn 1988, at 105. Another commentator also stated that, "[s]ince the breakup of the postwar foreign-policy consensus in the late 1960s, the United States has found itself in an intellectual quandary about what the relationship of international law to foreign policy ought to be." Albert R. Coll, International Law and U.S. Foreign Policy: Present Challenges and Opportunities, Wash. Q., Autumn 1988, at 107, 110.

6. Jeane Kirkpatrick writes that "[a]n examination of the philosophical foundations of the liberal tradition is particularly relevant to a consideration of Ronald Reagan, his presidency, and his administration, because the president and many of his principal advisors see themselves as purveyors and defenders of the classical liberal tradition in politics, economics, and society." Jeane J. Kirkpatrick, The Reagan Phenomenon, in Legitimacy and Force 389, 393 (1989) [hereinafter Legitimacy and Force].
II. THE REAGAN ADMINISTRATION'S CRITICS AND THE LIBERAL PROGRESSIVE TRADITION

A. The Conventional Critique of the Reagan Administration

The dominant critique of the Reagan administration's handling of the international law on the use of force comprises three elements. First, critics charge that the Reagan administration violated the international legal rules on the use of force and treated the international legal process and institutions with disrespect. Second, the critique holds that these violations and disrespect represent the fruit of the Reagan administration's "realism," a perspective on international politics that dismisses international law as a utopian toy. Third, the critics lament that the Reagan administration abandoned the American tradition of fostering the international rule of law in resolving international conflicts.

1. Violations and Disrespect

According to its critics, the Reagan administration repeatedly violated a principle norm of the contemporary international system: the prohibition on the use or threat of force laid down in article 2(4) of the United Nations (U.N.) Charter. Article 2(4) not only represents a binding treaty obligation on the United States, but, according to many publicists and the ICJ, customary international law on the use of force is identical with article 2(4), and the prohibition on the use or threat of force is a peremptory rule of international law, or *jus cogens*. Violations of international law's prohibition on the use of force, then, represent actions that strike against one of the cornerstones of the international legal order.

Publicists most frequently charge that the Reagan administration violated the prohibition on the use of force in the United States' invasion of Grenada, Contra

7. Article 2, ¶ 4 states: "All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations." U.N. Charter art. 2, ¶ 4.

8. In *Nicaragua v. United States*, the International Court of Justice (ICJ) "held that customary law and the law of the Charter were essentially congruent in relevant respects . . . ." Henkin, *supra* note 2, at 67 n.22. Cassese writes that "the ban on the use of force has become part of international peremptory law or *jus cogens*." Antonio Cassese, *International Law in a Divided World* 141 (1986). The ICJ also made reference to the concept of *jus cogens* in relation to article 2(4)'s prohibition on the use or threat of force. *See* Gordon A. Christenson, *The World Court and Jus Cogens*, 81 Am. J. Int'l. L. 93 (1987).
policy in Nicaragua, and bombing of Libya. Writers described the invasion of Grenada as "a far-reaching deviation from the traditional rules governing the use of force in international relations," as a "flagrant violation of international law," and, more harshly, as "no different from those [invasions] of the axis powers prior to and during World War II, or the much more recent Soviet invasion of Afghanistan . . . ." Similar attacks populate the international legal literature in relation to the United States' Nicaraguan policy and to the bombing of Libya. The literature also contains accusations that the Reagan administration breached the law on the use of force in relation to the United States' military interception of the aircraft carrying the Achille Lauro pirates, military intervention in Lebanon, and indirect military support for insurgency movements in Afghanistan, Angola, and Cambodia.

The "indictment" of the Reagan administration as crafted in academic literature received its day in court as far as the Nicaraguan policy was concerned in Nicaragua v. U.S. Nicaragua filed a complaint with the ICJ against the United States on April 9, 1984, accusing the Reagan administration of flagrant violations of article 2(4) of the U.N. Charter and of customary international law in its support for the Nicaraguan resistance movement known as the Contras. In spite of the United States' withdrawal from the proceedings on the merits, the ICJ held that the United States had violated the customary international law.

13. See, e.g., Henkin, supra note 2, at 54 and Malawer, supra note 9, at 102.
14. Malawer, supra note 9, at 99.
15. Id. at 93.
16. Id. at 104.
prohibiting the use of force against another state in certain actions it had taken in supporting the Contras.\(^\text{18}\)

The alleged repeated violations of the international law on the use of force provided evidence for the accusation that the Reagan administration treated rules of international law callously. As Henkin observes, the Reagan administration's justifications for its actions in Grenada, Nicaragua, and Libya were widely rejected by international lawyers, other governments, and international organizations.\(^\text{19}\) Coll attributes the Reagan administration's failure to articulate persuasive legal justifications for its actions to the lack of "a sophisticated understanding of the relationship of international law to a successful foreign policy."\(^\text{20}\) Coll locates this supposed callousness or unsophistication of the Reagan administration in "the largely negative view of international law prevalent within most conservative circles of the Republican party ..."\(^\text{21}\)

For many, the height of the Reagan administration's callousness occurred when it withdrew from the proceedings in *Nicaragua v. U.S.* after the ICJ ruled on November 26, 1984 that it had jurisdiction over Nicaragua's claims and that the claims were admissible.\(^\text{22}\) As part of its explanation for withdrawing, the Reagan administration stated that "[w]e will not risk U.S. national security by presenting such sensitive material in public or before a Court that includes two judges from the Warsaw pact nations."\(^\text{23}\) The decision to withdraw and the attempt "to disparage the judicial character and integrity of the Court"\(^\text{24}\) provoked condemnation of the Reagan administration's action.\(^\text{25}\) One critic equated the Reagan administration's boycott of the merits stage of *Nicaragua v. U.S.* to the Khomeini government's refusal to appear before the ICJ in the Iranian hostages case.\(^\text{26}\) The withdrawal episode, thus, helped foster the belief that not only did the Reagan administration care little about the international law governing the

---

18. See Herbert W. Briggs, *The International Court of Justice Lives Up to Its Name*, 81 Am. J. Int'l. L. 78, 79 (1987). Since the ICJ considered article 2(4) and customary international law on the use of force identical in substance, the ICJ ruling against the United States constitutes a *de facto* ruling that the Reagan administration violated article 2(4). *Id.* at 79-80.


21. *Id.* at 116-17.


use of force but that it also cared no more about the procedures and institutions of international law and justice.

2. The Reagan Administration's Realism

According to the conventional critique, the Reagan administration adhered to the perspective on international politics known as "realism," which serves to explain the administration's actions. In the eyes of critics, the Reagan administration's realism comprised a rejection of the role of law in international politics, an emphasis on power as the key determinate of foreign policy, and a penchant for unilateral action in pursuit of the national interest defined in terms of power.

Realism attaches great importance to enforcement in relation to law, following Hobbes' famous statement that law "properly is the word of him, that by right hath command over others." Rules, such as those found in international law, are not properly "law" because international law lacks any enforcement mechanism common to all states. International law, then, is nothing more than what Austin termed "positive international morality." As such, it occupies a lowly place in realism's scheme of international politics.

Critics point to the Reagan administration's demotion of international law as evidence of realism's influence. Highet detected a "decline of public international law and institutions as important influences in the conduct of United States foreign policy." Sultan heard "an unmuted chorus articulating an aggravated insensitivity — some would say arrogance — towards respect for international law on the part of President Reagan and his policy makers." Coll observes that within the Republican party "international law has been relegated to the realm of the useless and irrelevant, if not outright dangerous, fictions with which hard headed statesmen need not concern themselves."

The conventional critique also notes the Reagan administration's elevation of the role of power politics in international affairs. Realism sees international politics as a struggle for power in which moral restraints in the guise of law are ineffective. Realism divorces the principles of power politics from the principles of morality and law. Many saw this process at work in the Reagan


30. Sultan, supra note 2, at 245.

31. Coll, supra note 5, at 110.
administration. Moynihan wrote that "there has been a steady erosion of the active conviction that law is the basis on which we conduct our foreign affairs" and that the United States increasingly responds to international events "in terms of a narrow and almost normless realpolitik." Boyle commented that the Reagan administration comprised "a group of men and women who were elementally lawless and thoroughly Machiavellian in their perception of international relations and in their conduct of foreign affairs." Chayes suggested that President Reagan believed that in foreign affairs he was a law unto himself. Falk noted that the Reagan administration was following the Soviet Union and many Third World states in disregarding international law's normative restraints on the use of force.

Realism was also seen as influencing the Reagan administration's alleged preference to act unilaterally in pursuit of a national interest defined narrowly in terms of power. The dictum of one political realist, Hans Morgenthau, that "statesmen should think and act in terms of interest defined as power" seemed to animate the Reagan administration's foreign policy. The Reagan administration, according to the critique, pursued its power interest unilaterally rather than through cooperation based on legal principles and procedures, thus ignoring not only international law but also the interests of other states. Thus, the critics draw a composite picture of a realist administration pursuing an illegal, normless, power-seeking, unilateralist, and nationalistic foreign policy.

33. Moynihan, supra note 12, at 77.
38. Henkin, supra note 2, at 68 n.28; Malawer, supra note 9, at 86 n.9. Another writer noted that the "Reagan Administration, it is regularly contended, was more nationalistic in outlook than any of its postwar predecessors. . . . In turn, this outlook sanctioned a diplomatic style that had a marked propensity for unilateralism." Robert Tucker, Reagan's Foreign Policy, 68 Foreign Aff. 1, 5 (1989).
3. Abandoning the American Tradition of Fostering the Rule of Law in International Relations

Critics find that the Reagan administration's violations of international law, disrespect for international legal institutions and procedures, and realism also cut against the American tradition of fostering the rule of law in international relations.39 Eugene Rostow describes the American tradition allegedly abandoned by the Reagan administration:

From the day that American Presidents and Secretaries of State emerged as actors in world politics, they became important spokesmen for international law, and contributed disproportionately to its development. During much of the nineteenth-century, Americans pressed international arbitration and international tribunals as means to achieve the peaceful resolution of international conflict. And Americans played a critical part in the drafting and adoption both of the League Covenant and of the United Nations Charter.40

Americans played an instrumental role in creating both the international law prohibiting the use or threat of force embodied in article 2(4) and the international legal institution and procedures of the ICJ. The critique holds that the Reagan administration abandoned both of these American achievements.

On the rule governing the use of force, Chayes writes: "The current official United States position thus seems to be that the use of force is a legitimate instrument of foreign policy. That position turns its back on the long and costly effort, in large part led by this country, to establish the contrary."41 On the international legal institution and procedures embodied in the ICJ, Glennon notes: "The United States has — or had — long liked to think of itself as one of the most enthusiastic supporters of international adjudication. . . . The U.S. withdrawal from the [ICJ's] compulsory jurisdiction received little press attention; few Americans realize how radically the United States has departed from longstanding tradition."42 The Reagan administration's critics saw the administration

39. Malawer complained that "[t]he legacy of the Reagan Administration's foreign policy . . . is contrary to traditional United States support for international law and multilateral cooperation." Malawer, supra note 9, at 108-09. Turner noted that Reagan administration policies "have contributed to a growing perception, even among some of our closest allies, that we no longer place the great importance upon the rule of law that once characterized our international behavior." Robert Turner, International Law, the Use of Force, and Reciprocity: A Comment on Professor Higgins' Overview, 25 Atlantic Community Q. 160 (1987).
41. Chayes, supra note 24, at 1480-81.
as a "giant step backward" for international law and the American tradition of fostering the rule of law in international affairs.\textsuperscript{43}

\textbf{B. Traditions of Liberal Thought}

The belief that international law is a critical means to control the use of force in international politics animates the international legal critics of the Reagan administration. As the critics argued, fostering the international legal control of force has been a distinguished American tradition. Understanding this belief and the tradition in which it is manifest will be central to analyzing the merit of the conventional critique of the Reagan administration and the struggle of liberal thought to come to grips with international politics.

The belief in the promise of international law represents an important part of what I call the "liberal progressive" tradition of thought about international politics. The liberal progressive tradition forms one of four different liberal perspectives on international relations. I will examine two perspectives, realism and liberal realism, in Part III. Here I will present the other two perspectives, liberalism and liberal progressivism, and will focus on the liberal progressive tradition because it is the tradition in which the Reagan administration's international legal critics belong.

\textbf{1. Liberalism}

Liberalism holds that international relations are not inherently characterized by a state of war and that great schemes of improvement and transformation are not required. The two major thinkers in this tradition are John Locke and David Hume.\textsuperscript{44} Locke's perspective on international politics flows from his analysis of the state of nature. Locke argued that the state of nature is not characterized by violence and fear but instead by peace and goodwill.\textsuperscript{45} The individual in the state of nature follows a law of nature, which obliges each individual to harm no other person's life, liberty, health, or property.\textsuperscript{46} While some individuals will transgress against the law of nature, Locke believed that the law of nature prescribes that aggressors may be punished not only by the immediate victim but by everyone else in the state of nature as well.\textsuperscript{47} This system of self-help,
however, creates inconveniences that taint the state of nature. Locke's solution to these inconveniences is the formation of a representative civil government.

Locke recognizes that international politics is a system of self-help as well, but he does not advocate a world government to eradicate its inconveniences. Instead, Locke believed that international relations was in no need of reform for two reasons. First, Locke saw the law of nature governing the international state of nature as it governed the individual state of nature. The law of nature, thus, imposed significant restraints on states. Second, Locke believed that commerce could strengthen the restraints imposed by the law of nature by allowing states to grow rich without conquest. Locke, therefore, saw no pressing need to transform international relations.

Hume reached the same conclusion but by a slightly different route. Hume believed that the same moral rules that applied to individuals applied to states as well. Hume's "three fundamental rules of justice" were: (1) the stability of possessions; (2) the transfer of property by consent; and (3) the performance of promises. Hume acknowledged, however, that these rules had less force among states than among individuals. Yet Hume, like Locke, did not consider international relations in need of reform for two reasons. First, Hume saw the balance of power as a moderating force on state behavior. Second, Hume believed that a state's interest in wealth and power was best satisfied not through conquest and colonies but through commerce; a commercial policy would enhance the prospects for the three fundamental rules of justice being obeyed by states.

Liberalism's model of international relations, then, envisions independent states pursuing their interests in an international system marked by moderation, cooperation, and stability. The guarantors of the benign system are features inherent in the system: the law of nature, trade, and the balance of power.

2. Liberal Progressivism

The liberal progressive tradition holds that international politics needs transforming, can be transformed, and should be transformed into a peaceful and just system. Liberal progressives accept the realists' grim depiction of international political reality, but they argue that progress can triumph over
power when reason reforms the behavior and institutions prevalent in international relations. The liberal progressive model of international relations envisions a system of independent states pursuing their interests within a "legal community of mankind." A central feature of the legal community of mankind would be the restriction and control of the use of force by states. Force would be brought under control by legal progress, a process in which international law is the catalyst and vehicle for constraining the use of force in international relations. Legal progress, in turn, requires three developments: (1) a shift in thinking away from seeing force as politically and legally proper; (2) movement towards achieving important political conditions in the international system; and (3) creation of needed legal mechanisms for international society. The objective of legal progress is nothing less than a peaceful international system not menaced by the threat or use of force.

The idea of legal progress forms a tradition because it has been endorsed by liberals from the Enlightenment forward. Immanuel Kant, for example, believed that "the establishment of a universal and enduring peace is not just part, but rather constitutes the whole purpose of Law within the bounds of pure reason." In the interwar years, the great British jurist Lauterpacht wrote that "[p]eace is pre-eminently a legal postulate . . . ." And in the 1980s, one of Nicaragua's American counsel in Nicaragua v. U.S. expressed his belief "that international law is the best safeguard against war, destruction, and chaos." The plethora of critics of the Reagan administration also indicate that the liberal progressive tradition remains energetic. The critique of the Reagan administration, in essence, is a very recent manifestation of the liberal progressive tradition.

C. The Liberal Progressive Tradition

1. Shift from the Classical Paradigm to Legal Progress

Prior to the Enlightenment, the law of nations incorporated virtually no legal controls on the use of force by states. In fact, because it was the legal enforcement mechanism for the violations of existing legal rights and duties, war played an integral part in the legal relations of states. War gave the law of nations a legal character because it provided a mechanism for the enforcement of

58. Immanuel Kant, Kant's Political Writings 257 (Hans Reiss ed., 1971).
the rights and duties of states created by the law of nations.\textsuperscript{61} Hugo Grotius' writings perhaps best illustrate this classical paradigm since in his system war was a judicial procedure for the redress of suffered wrongs.\textsuperscript{62} The most well-known attempt to impose some orderly controls on the use of force before the Enlightenment was the Christian Just War doctrine.\textsuperscript{63} Ironically, the increasing focus on the sovereignty of states in the law of nations, and hence the sovereign right to wage war, both represented and hastened the breakdown of the older just war conception of a larger community of Christian peoples bound by a natural law that impinged on the resort to arms. Under the classical paradigm, war was "the actual foundation of the whole so-called international law."\textsuperscript{64}

During the Enlightenment, revision of the classical paradigm began; the idea of legal progress emerged in liberal thought.\textsuperscript{65} Three forces combined to produce the first intellectual sparks of the liberal progressive tradition. First, liberal thought developed as a powerful political philosophy under the influence of Locke's and Montesquieu's writings. The notion of protecting individual rights

\textsuperscript{61} Oppenheim wrote that, "States have to take the law into their own hands. Self-help and intervention on the part of other States which sympathize with the wronged one are the means by which the rules of the Law of Nations can be and actually are enforced." Alfred Lundstedt, Superstition or Rationality in Action for Peace 172 (1925).


\textsuperscript{63} Hoffmann summarizes the Christian Just War doctrine:

War would be just only if fought with the right intention by the prince — peace and justice, not revenge — and waged for a just cause which could be either self-defense or a cause of sufficient concern to the community of mankind — redressing a serious injury to one's people or one's possessions. As for the means, they were to be restricted by a series of objective and subjective restraints. The objective restraints were quite numerous — one was allowed to use only means which had a reasonable chance of success, only means which were proportional to the stakes, and there was the most important objective prescription of noncombatant immunity. As for the subjective restraints, the most famous is the formidable double effect rule, which said that an act of war that was likely to have an evil effect, such as killing noncombatants, would be morally tolerable only under two conditions: first of all, that the direct intended effect be morally acceptable (and of course, given the rule of proportionality, superior to the evil effect) and second, that the evil effects be unintended, and not a means toward the end.


\textsuperscript{64} Lundstedt, \textit{supra} note 61, at 205.

\textsuperscript{65} Hinsley captured this change when, in analyzing Kant, he wrote: "Under the existing law of nations states could seek their rights only by war. 'Reason . . . condemns war as a method of finding what is right.' Thus the law of nations must be altered." Francis H. Hinsley, Power and the Pursuit of Peace 68 (1967).
through laws passed and enforced by a government chosen by and answerable to the citizenry revolutionized political theory and, in the cases of the American colonies and the French ancien regime, political reality. Law gained increased prominence under liberal theory as the model for domestic politics became the rule of law not the rule of men.

Second, the idea of progress emerged during the Enlightenment. Unlike the cyclical view of history held by the ancients, Enlightenment thinkers posited that human progress was possible given certain reforms of political, economic, and social institutions. Confidence in human reason increased, and the philosophes argued that the rule of reason needed to be imposed on international relations.

Third, dissatisfaction with the prevailing diplomacy of balance of power politics reached new heights under the influence of seemingly endless warring and the promise of reason applied to foreign policy. The philosophes targeted the balance of power, which was viewed as diplomacy by passion, whims, intrigue, and arbitrary proclivities. Such an irrational diplomacy stood in the way of international progress.

In contemplating politics beyond the state, liberal thinkers rejected the old panacea for war — some type of world government or federation. Liberal thinkers, confronted by a system of sovereign states, began to devise ways to reduce conflict between states and to provide mechanisms for the peaceful settlement of disputes. International law figured prominently in achieving both objectives, thus ushering in the belief in international progress towards peace through international law.

2. Political Conditions Necessary for Legal Progress

From the Enlightenment forward, most liberal progressives realized that controlling war would require changes in political conditions between and inside states. It would not do, in other words, merely for states to proclaim that force should bend its knee before international law. Legal progress demanded a progressive milieu.

a. Interdependence

Interdependence is one of the oldest and most famous of the liberal progressive ideas for changing the political conditions in international relations. Through interdependence, liberal progressive thinkers hoped to reduce the sources

68. Id. at 8, 10.
69. Hinsley, supra note 65, at 116.
of conflict between states and, thus, the likelihood of armed confrontations. Enlightenment progressives, for example, viewed balance of power diplomacy as destructive because it forced governments to focus on narrow conceptions of national interest determined in military terms. The balance of power structured state relations such that the opportunity for building common ground over a wider spectrum of national interests was impossible. Liberal thinkers sought to change the clash of national interests on a military level into a convergence of interests on an economic and commercial level. Tightly intertwined economic and commercial interests would make states interdependent, meaning that unilateral action, particularly military action, would threaten the acting state's own power and legitimacy.

The *philosophes* promoted the idea that free trade would create an interdependent system of private and public relations that would foster accommodation and harmonization of national interests on economic and commercial rather than military terms. Free trade would build common ground between the peoples and the governments of states, which in turn would reduce conflict between governments and make resort to war an increasingly unappealing method of resolving disputes. Kant and Jeremy Bentham joined the *philosophes* in promoting free trade as a means to reduce conflict and produce peaceful interdependence. This Enlightenment initiative became a feature of the nineteenth century British and American peace movements.

The second reform designed to produce interdependence was the fashioning of some principle of international organization with which states could coordinate and cooperate diplomatically in a multilateral context rather than in the militaristic unilateralism of balance of power politics. Not all liberal thinkers agreed that some form of international organization was needed. Many *philosophes*, for example, believed that free trade would establish the community of interests between states without the need for anything more formal. The feeling in the Enlightenment, however, that European states belonged to a single society, a "family of nations," of a "general and unbreakable confederation" led some liberal progressives to promote principles on which to organize this international society other than the balance of power. The most famous liberal

---


71. "In essence, liberals believe that trade and economic intercourse are a source of peaceful relations among nations because the mutual benefits of trade and expanding interdependence among national economies will tend to foster cooperative relations." Robert Gilpin, *The Political Economy of International Relations* 31 (1987).


74. Hinsley, *supra* note 65, at 82-83.

progressive attempt came from Kant, who believed that a "confederation" of states was needed to reduce war and violence between states.\textsuperscript{76} Kant's confederation, however, was not a formal organization but rather was an arrangement in which the separate states voluntarily accepted to live by a rule of law.\textsuperscript{77} In Kant's perspective, the animating principle of international organization was "Cosmopolitan or World Law," or, in Hinsley's words, "collaboration between states under an improved law of nations."\textsuperscript{78} International society, therefore, was to be organized not by balancing military alliances but by reference to international law.

Kant's system, moreover, demonstrated that international law was central to interdependence by free trade as well. Kant limited his "Cosmopolitan or World Law" to a rule of universal hospitality that would allow citizens to trade, travel, and develop intercourse with foreign peoples without prejudice or arbitrary interference. Kant saw the importance of making such contacts "public and legal" rather than leaving them outside the sphere of diplomacy and international law.\textsuperscript{79}

The liberal progressive strategy of reducing international conflict through interdependence represented, in essence, a strategy of legal progress. Free trade would produce a community of interests in the private and public sphere that could be organized and protected by international law. Disputes, therefore, would adopt a legal rather than military nature.

b. Demilitarization

The second major political change that liberal progressives believed necessary was demilitarization. Interdependence's goal of crafting a community of interests between states aimed at reducing the sources of military conflict; demilitarization supplements interdependence by reducing the threat of military power itself. The great reform idea for demilitarizing international politics was disarmament. Liberal progressives have long called on states to reduce the levels of their armaments for the sake of peace.\textsuperscript{80} The disarmament strategy had two objectives. First, disarmament widely implemented in the international system would reduce the nervousness and tension in foreign affairs created by the presence of military power. The liberal progressive view held that arms races were a cause of war, a cause disarmament would address.\textsuperscript{81} Second, disarmament would eliminate the pernicious effects within states caused by standing armies. Most liberal thinkers in the eighteenth century agreed with Rousseau that standing armies were

\textsuperscript{76} Kant, \textit{supra} note 72, at 441.
\textsuperscript{77} Hinsley, \textit{supra} note 65, at 71.
\textsuperscript{78} Francis H. Hinsley, Nationalism and the International System 76 (1973).
\textsuperscript{79} See Hinsley, \textit{supra} note 65, at 65-66.
\textsuperscript{80} See \textit{id.} at 114-49 for a discussion of the development of the idea of disarmament in European peace movements.
\textsuperscript{81} Id. at 85.
"dangerous establishments" because their maintenance threatened individual and societal well-being. Kant, for example, incorporated both of these objectives in one of his preliminary articles for establishing perpetual peace: the gradual reduction of standing armies as part of the peaceful confederation governed by international law. The strength of opposition in the American states to standing armies obliged Alexander Hamilton to address "the cry raised on this head."

As Kant realized, disarmament throughout the international system depended upon replacing war with law as the conflict resolution mechanism. The systemic benefits of international disarmament, therefore, would be realized only if international law became the organizing principle of international politics instead of the balance of power. Disarmament, then, would be a legal process both in the setting, supervision, and fulfillment of reciprocal disarmament obligations.

c. Democratization

The third major political change that many liberal progressives believed necessary was the democratization of diplomacy and of politics within the state. Another reason why liberal progressives dislike the balance of power is that it imposes on international politics a hierarchy in which great powers dictate the terms, dynamics, and direction for the entire international system. The balance of power provides no way for medium and small states to participate in international relations except as pawns in the stratagems of the great powers. Liberal progressives, therefore, wanted to see international society's diplomacy altered to allow all states to participate equally in setting and debating the international agenda. A more democratic diplomatic structure would allow medium and small states the chance to influence their own fate and the direction of the system as a whole; such a structure would also erode, at least formally, the uninhibited prerogatives of the great powers. The democratization of diplomacy could take place within an international system organized by law, where each state could participate in international politics on an equal footing.

Many liberals also considered it necessary for legal progress to have democracy reign as the principle of legitimate government within states. Liberal progressives believed that democratic republics would be peaceful because the people, through their elected representatives, controlled the decision to go to war

82. Jean-Jacques Rousseau, Discourse on Political Economy, in Rousseau on International Relations 27 (Stanley Hoffmann and David P. Fidler eds., 1991) [hereinafter Rousseau on International Relations].
83. Kant, supra note 72, at 432.
85. For a discussion of the role of the great powers in maintaining international order, see Bull, supra note 28, at 200-09.
as well as the power to raise and equip military forces. Establishing republican democracies would demilitarize international and domestic politics by placing the decision to go to war and the power of military spending in the hands of those, the people, who suffer the most from war and military establishments.

The significance of establishing democracy as the principle of political legitimacy within states has profound importance for the rule of law in international politics. First, the democratic state's aversion to armed conflict will make legal resolution of international disputes very appealing. Second, a system comprised of democratic states could produce such a high degree of reciprocity in the obedience of international law that the lack of a higher sanctioning authority ceases to be a problem. Thus, as Waltz wrote in analyzing Kant, "The 'power' to enforce the law is derived not from external sanction but from internal perfection."

3. Legal Mechanisms Necessary for Legal Progress

Liberal thinkers also believed that international legal mechanisms would be necessary for legal progress. If international law was to become the organizing principle of international society, then sophisticated procedures, institutions, and rules would have to support it.

a. Mechanisms for the Legal Resolution of Conflict

Liberal progressive thinking wanted states to resolve their conflicts by law and not by force. This desire produced three different legal means to peacefully resolve conflicts between states.

The first means was an explicit code of international law. Codification of the rules of international law was necessary for a simple reason: if states wanted

86. Again, Kant's thought is representative; in his first definitive article of his plan for perpetual peace, Kant demands that the civil constitution of each state be republican. Other Enlightenment liberals, like Condorcet, also adhered to this view. Gilbert, supra note 67, at 13-15.

87. In Kant's words, "[i]f . . . the consent of the citizens is required in order to decide whether there should be war or not, nothing is more natural than that those who would have to decide to undergo all the deprivations of war will very much hesitate to start such an evil game." Kant, supra note 72, at 438. We see this idea at work in the United States Constitution, which vests the power to declare war and to raise armies in the democratically-elected Congress. U.S. Const. art. I, § 8, cls. 11-12.


89. If international law was to provide the basis of international relations, then states would benefit from what Jeremy Bentham and James Mill called a rational code of international law. Hinsley, supra note 65, at 88-89.
to settle their disputes by law, then a code would prevent the states from differing much about the meaning of relevant rules. The codification idea established itself firmly in liberal thought during the nineteenth century as groups such as the International Code Committee in the United States and the Association for the Reform and Codification of International Law in Europe devoted their efforts to "codifying international law so as to make it an 'organ of the world's conscience' and an effective means of settling international disputes without recourse to war."90 Codification was also a major element in the thinking of American international lawyers during the years preceding the First World War.91 Codification of the laws of war was a topic at both the First and Second Hague Peace Conferences of 1899 and 1907 respectively.92 The League of Nations also sponsored codification conferences during the interwar period.93 Some international lawyers believe that article 2(4) of the U.N. Charter is a codification of the customary rule against the use or threat of force developed prior to the Second World War.94 The United Nations has participated heavily in codification as well. The General Assembly, pursuant to article 13, paragraph 1(a) of the U.N. Charter, created the International Law Commission as a subsidiary organ charged with "the progressive development of international law and its codification."95

The second mechanism promoted by liberals for legally resolving state disputes was arbitration.96 Although modern arbitration began with the Jay Treaty of 1794 between Great Britain and the United States,97 it did not capture the liberal imagination until after the famous 1872 Alabama Claims arbitration between Great Britain and the United States.98 Liberals expanded the precedent of the Alabama Claims arbitration into a movement of impressive proportions.99

90. Id. at 127.
91. Boyle, supra note 34, at 28.
92. Rules on the occupation of enemy territory, for example, were codified in Articles 42-56 of the Regulations annexed to the 1907 Hague Convention Respecting the Laws and Customs of War on Land. See Documents on the Laws of War 55-57 (Adam Roberts & Richard Guelff eds., 1982).
94. See, e.g., Brownlie, supra note 62, at 112-13.
95. U.N. Charter art. 13, ¶ 1(a).
96. Arbitration is a procedure "which has for its object the settlement of differences between States by judges of their choice and on the basis of respect for law . . . ." Permanent Court of International Justice in David J. Harris, Cases and Materials on International Law 706 (3d ed. 1983).
97. Id.
99. In 1873, for example, two American international lawyers, J.B. Miles and D.D. Field, traveled Europe propagating a plan for a permanent system of arbitration.
The years preceding the First World War saw an increase in the number of bilateral arbitration treaties, in which states agreed to submit various kinds of disputes to arbitration.\textsuperscript{100} Although interest in arbitration declined after the arrival of international adjudication tribunals, it continues to be part of the liberal progressive tradition not only because of its historical role but also because it remains one of the methods of resolving interstate disputes without recourse to force.\textsuperscript{101}

The third mechanism promoted by liberals for legally resolving international disputes was international adjudication. International adjudication differs from arbitration in that it "presupposes the existence of a standing tribunal with its own judges and its own rules of procedure which parties to a dispute must accept."\textsuperscript{102} Jeremy Bentham and James Mill were great believers in the notion of a permanent judicial tribunal for resolving state disputes. Bentham stated: "While there is no common tribunal something might be said for war. Establish a common tribunal, the necessity for war no longer follows from difference of opinion."\textsuperscript{103} There were many international lawyers during the late nineteenth and early twentieth century who believed that an international court of justice needed to be established to compensate for the weakness of arbitration.\textsuperscript{104} The revival of federal solutions to the problem of war immediately before and during the First World War also contributed to the movement for a world court.\textsuperscript{105} Such a court appeared as part of the League of Nations in 1920 (the Permanent Court of International Justice) and later as part of the United Nations in 1945 (the International Court of Justice).

Since the idea of a world court developed directly from a desire to prevent the use of force in international relations, many liberals believe that war and force should be a concern of the world court's jurisprudence. We see the strength of this belief manifested in the support and praise the ICJ received from many liberal quarters for its willingness to handle the use of force controversies in \textit{Nicaragua v. U.S.}\textsuperscript{106} 

\textsuperscript{100} Brownlie, \textit{supra} note 62, at 23.
\textsuperscript{101} In recent years, according to Brownlie, efforts have been made to revive interest in the Permanent Court of Arbitration. Brownlie, \textit{supra} note 93, at 708 n.1.
\textsuperscript{102} Georg Schwarzenberger, \textit{in} Harris, \textit{supra} note 96, at 706.
\textsuperscript{103} Hinsley, \textit{supra} note 65, at 85.
\textsuperscript{104} Boyle, \textit{supra} note 34, at 18.
\textsuperscript{105} See Hinsley, \textit{supra} note 65, at 140-48.
b. Mechanism for Legally Deterring and Punishing Aggression

The idea of legal progress for a long time had not included a legal sanction that would be applied in cases of aggression. As noted earlier, the previous sanction for violations of the law of nations had been the unilateral resort to force by the injured state. The whole purpose of legal progress was to make such a resort to force unnecessary to resolve disputes touching upon important national interests. The First World War, however, jolted liberal minds into confronting the need for a legal sanction against aggression. That jolt produced the idea of collective security.

The theory of collective security has two basic elements. First, the unilateral resort to force is legally restricted. Second, a mechanism is established that provides for the collective use of force by the international community against a state violating international law through aggression. Security for states, therefore, becomes the collective responsibility of the international community. Collective security in theory seeks to deter aggression or to punish an aggressor if aggression occurs. Collective security, further, provides international law with a legitimate sanction utilized for the benefit of the entire international society.

Both the Covenant of the League of Nations and the U.N. Charter incorporate collective security mechanisms. The Covenant restricted a state’s right to resort unilaterally to force: “[s]elf-help was restricted; war was no longer the 'litigation of Nations.'” The Covenant restricted the customary right to resort to force by committing states (i) not to resort to war within the three months that followed an arbitral or judicial decision; (ii) not to enter war with a state that had conformed to an arbitral or judicial decision; and (iii) not to enter war with a state that had conformed to the unanimous recommendations of the Council of the League of Nations. The Covenant then provided for collective security, albeit on a limited scale: “Should any member of the League resort to war in disregard of its covenants under Articles 12, 13 or 15, it shall ipso facto be deemed to have committed an act of war against all other members.


107. See supra text accompanying notes 61-64.

108. According to Bull:

The principle of collective security implies that international order should rest not on a balance of power, but on a preponderance of power wielded by a combination of states acting as the agents of international society as a whole that will deter challenges to the system or deal with them if they occur.

Bull, supra note 28, at 239.


111. Id. at art. 13, ¶ 4.

112. Id. at art. 15, ¶ 6.
of the League." Since each member of the League undertook to preserve as against external aggression the territorial integrity and political independence of all members of the League, article 16 committed League members to impose obligatory economic sanctions against the aggressor and authorized the League Council to formulate recommendations for the taking of military sanctions by the League members against the aggressor.

The U.N. Charter similarly sets up a collective security system. Article 2(4), as noted earlier, prohibits the unilateral use or threat of force by states except in self-defense in response to an armed attack. In the case of "any threat to the peace, breach of the peace, or act of aggression," the Security Council has the authority to call upon the member states to impose economic and diplomatic sanctions or to take military action to maintain or restore international peace and security with military forces made available by the member states on the Security Council's request.

Collective security is an important feature of the liberal progressive tradition because of the prominence given to it in the League Covenant and the U.N. Charter. Since collective security developed to support legal restrictions on the customary right to use force, it represents a major aspect of legal progress.

c. Legal Rule Prohibiting the Use of Force

The strict prohibition on the use or threat of force found in the U.N. Charter is the last legal mechanism central to legal progress. We noted that the theory of collective security mandated legal restrictions on a state's unilateral use of force. In the liberal progressive tradition, however, the importance of a legal rule restricting a state's right to use force has value independent of the collective security theory from which it developed. The value of the rule embodied in article 2(4) of the U.N. Charter is that it rejects the classical paradigm of international law in which the resort to force was not restricted and that it serves, much like the Just War doctrine in medieval times, as the paramount norm against which all uses of force are legally and morally judged.

As part of the liberal progressive tradition, the legal rule prohibiting the use or threat of force has been interpreted in a manner consistent with the idea of legal progress. The legal interpretation used against the United States in Nicaragua v. U.S. and the ICJ's approval of that interpretation illustrate the liberal progressive

113. Id. at art. 16, ¶ 1.
114. Id. at art. 10.
116. Id. at art. 41.
117. Id. at art. 42.
118. Id. at art. 43.
119. See supra text accompanying notes 108-115.
tradition's perspective on the meaning of the legal rule prohibiting the use or threat of force.

First, international society has only one rule on the use of force. The customary rule on the use of force, in other words, is identical to the prohibition set out in article 2(4) of the U.N. Charter.120 The importance of a single rule to legal progress is simple. The historical tolerance of customary international law for the resort to force would contradict the prohibition in the U.N. Charter. The two rules cannot simultaneously apply in the same legal regime. Revision of the classical legal paradigm — the very objective of legal progress — would not be achieved if the content of customary international law on the use of force was not altered to reflect the prohibition in article 2(4). Customary rules could not escape "the decisive change from a legal regime of indifference to the occasion for war . . . to a legal regime which has placed substantial limitations on the competence of states to resort to force."121 Second, the single rule on the use of force is interpreted broadly in order to place tight limits on the legal use of force. The only permissible use of force by states under the broad interpretation is self-defense.122

The ICJ approved of the broad interpretation of the rule prohibiting the use of force in Nicaragua v. U.S. The ICJ decided that the United States breached its obligation under customary international law not to use force against another state in its mining of Nicaraguan harbors and its training, arming, financing, and

120. As mentioned previously, some international lawyers see article 2, ¶ 4 merely as a codification of the customary prohibition on the use of force except for self-defense developed during the interwar period. See Brownlie, supra note 62, at 112. The ICJ endorsed the unity of the rule in Nicaragua v. U.S. when it held that "customary law and the law of the Charter were essentially congruent in relevant respects." Henkin, supra note 2, at 67 n.22.
121. Brownlie, supra note 62, at 424.
122. U.N. Charter art. 51. There is, however, something of a controversy in the liberal progressive tradition about the use of force for humanitarian purposes, an argument traditionally used when a state ostensibly uses force to protect nationals in other states. Henkin, for example, writes that "the legal community has widely accepted that the Charter does not prohibit humanitarian intervention by use of force strictly limited to what is necessary to save lives." Henkin, supra note 2, at 41. Akehurst, however, argues that humanitarian intervention, particularly to protect lives of nationals abroad, is recognized as illegal by the international community. Michael Akehurst, Humanitarian Intervention, in Intervention in World Politics 95, 99 (Hedley Bull ed., 1984). Brownlie, likewise, argues that intervention to protect nationals has no basis in the current law. See Brownlie, supra note 62, at 298-301 and Ian Brownlie, Thoughts on Kind-Hearted Gunmen, in Humanitarian Intervention and the United Nations 139 (Richard B. Lillich ed., 1973). The practical consequences of this disagreement are limited because those who believe that the current legal regime supports humanitarian intervention expressly reject as illegal humanitarian intervention that results in the overthrow of a government or the military occupation of a state, even if these actions are necessary to fulfill humanitarian objectives. Henkin, supra note 2, at 42.
encouraging Contra military and paramilitary activities in and against Nicaragua.123 While the ICJ found that United States' support for the Contras was a *prima facie* violation of the use of force rule, it did not find that Nicaragua's support for the El Salvadoran rebels violated the use of force prohibition. The ICJ, in essence, set down a threshold test for determining whether support for insurgencies in other states violates the prohibition on the use of force. According to the ICJ's reasoning, the Nicaraguans established that the United States' involvement in Contra activities passed the threshold point at which support for an insurgency becomes an illegal use of force, while the evidence of Nicaraguan involvement in El Salvador's civil war did not convince the ICJ that Nicaragua had passed the threshold. From the liberal progressive point of view, then, intensive financial, material, and political support for a rebel movement in another state violates the prohibition on the use of force; but such a violation does not occur if a state provides advice, arms, or economic assistance at lower levels.124

The third aspect of the liberal progressive interpretation of the prohibition on the use of force is the narrow reading of the right of self-defense. Under article 51 of the U.N. Charter, the use of force in self-defense is only permitted in response to an "armed attack."125 Under old customary international law, self-defense was permissible when the "necessity of that self-defense is instant, overwhelming, and leaving no choice of means, and no moment for deliberation."126 Article 51 seems to change the focus from the perceived immediacy of a threat to the occurrence of a prior military action against a state. The question, then, becomes not the pressing nature of a threat ("necessity") but the quality of the military activity involved ("armed attack").

The liberal progressive tradition interprets "armed attack" restrictively. In *Nicaragua v. U.S.*, for example, the ICJ held that "assistance to rebels in the form of the provision of weapons or logistical or other support" is not an armed attack justifying the use of force in self-defense.127 The ICJ, therefore, rejected the United States' claim that its Contra policy was justified as collective self-

---


124. Henkin, for example, writes that "providing advice, selling arms, or giving financial assistance to one (or both) sides in a civil war — seems not to be covered by article 2, ¶ 4 . . . ." Henkin, *supra* note 2, at 47.

125. U.N. Charter art. 51. Article 51 also imposes as part of the U.N. scheme the requirement that "[m]easures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council . . . ." Id.

126. *The Caroline Case*, in *Harris, supra* note 96, at 656.

defense with El Salvador against Nicaraguan aggression because Nicaragua's acts did not amount to an armed attack on El Salvador.\textsuperscript{128}

The ICJ again utilized a threshold test. An armed attack occurs if (i) a state sends its regular armed forces across an international border; or (ii) a state organizes, equips, and sends armed bands into another state's territory that, because of the scale and impact of the military activity, would be an armed attack if undertaken by regular military forces.\textsuperscript{129} Assistance for rebels in the form of advice, arms, finances, and sanctuary, however, does not constitute an armed attack.\textsuperscript{130} Whether support for an insurgency is an armed attack by a state against another, therefore, depends upon the level of control a state has on the insurgency's military activities and on the level of damage caused by those military activities.\textsuperscript{131}

Three important consequences flow from this restrictive interpretation of armed attack. First, the permissibility of a state's resort to self-defense depends on objective factual tests instead of a state's subjective determination of perceived threats to its interests. This change shifts the analysis from metaphysical discourse about the "considerable relativity" in the term "necessary\textsuperscript{132}" to factual questions. Brownlie argues that the difficulty of determining the facts is real but is "a problem of mechanics which it is the task of technical experts and international organs to solve, and which does not justify the surrender of responsibility by jurists."\textsuperscript{133} In other words, the liberal progressive regime on the use of force and self-defense only suffers from mechanical not conceptual difficulties.

Second, the ICJ creates a hierarchy of thresholds. The ICJ stated that military assistance to rebels may be a use or threat of force or constitute intervention and yet not be an armed attack.\textsuperscript{134} Similarly, the ICJ's analysis of support for rebels as a use of force suggests that Nicaragua's assistance to El Salvadoran rebels amounted to intervention but not to a use of force. The threshold hierarchy means that military support for insurgents can be (1) intervention without being a use of force, or (2) a use of force without being an armed attack. Different legal consequences result depending on where in the hierarchy a particular action falls.

\begin{itemize}
\item \textsuperscript{128} Military and Paramilitary Activities In and Against Nicaragua (Nicar. v. U.S.) (Merits), 1986 I.C.J. 14 (Judgment of June 27), ¶ 210-11.
\item \textsuperscript{129} Id. ¶¶ 187-201.
\item \textsuperscript{130} Id. ¶ 195.
\item \textsuperscript{131} Farer suggests that American involvement in the Bay of Pigs invasion and North Vietnamese participation in Viet Cong attacks on South Vietnam cross the threshold drawn by the ICJ while Nicaragua's support for Salvadoran rebels does not. Farer, supra note 106, at 113.
\item \textsuperscript{132} Brownlie, supra note 62, at 48.
\item \textsuperscript{133} Id. at 436.
\item \textsuperscript{134} Military and Paramilitary Activities In and Against Nicaragua (Nicar. v. U.S.) (Merits), 1986 I.C.J. 14 (Judgment of June 27), at ¶ 195.
\end{itemize}
Third, the hierarchy crafted by the ICJ does not fully clarify what responses by a state and its allies are legal in the cases of (1) a use of force that is not an armed attack; and (2) an intervention that is not a use of force. As Henkin notes, "the [ICJ] did not address the victim's right of armed response to 'less than an armed attack,' or what means other than force can be used in response to such interventions by either the victim or its friends..." The ICJ stated that a state facing action amounting to less than an armed attack could take "forcible countermeasures," but did not clarify what was meant by this concept. It did, however, explicitly prohibit collective countermeasures by a victim state and its allies in response to action not amounting to an armed attack. An ally may provide military support to a government facing an insurgency movement, but the ally cannot take action, directly or indirectly, against those states assisting the insurgency as long as the assistance does not amount to an armed attack.

It is not clear, however, what countermeasures the victim state can take directly against states whose support of insurgents does not constitute an armed attack. Farer suggests that, for example, El Salvador "is justified in providing arms to the Contras, unless Nicaragua has ceased aiding its rebels or it appears reasonably likely that an end to such assistance could be achieved through negotiations." Farer's suggestion implies that the threshold hierarchy creates a proportional response hierarchy. An armed attack, therefore, can legally be met by a proportionate armed counterattack. Uses of force must be answered by proportionate uses of force; victim states can legally respond to interventions with proportionate counterintervention. Only in the case of an armed attack, however, can collective measures be taken by a victim state and its allies. The hierarchy of proportionate responses, thus, flows logically from the hierarchy of thresholds present in the liberal progressive position.

135. Responses to armed attacks are legal if they are proportionate to the threat posed by the attack. See The Caroline Case, in Harris, supra note 96, at 655-56. Nicaragua's counsel argued that even if Nicaragua's support for Salvadoran rebels constituted an armed attack the Reagan administration's "creation of a 15,000-man mercenary army that regularly launches attacks against economic and civilian targets deep within Nicaragua — for the purpose of removing the Nicaraguan government — cannot be considered a proportionate response to purported arms shipments to El Salvador under any definition of the word 'proportionate.'" Reichler & Wippman, supra note 12, at 471.

136. Henkin, supra note 2, at 49.

137. Scheffer, supra note 4, at 9.


139. Farer, supra note 106, at 113.
D. Summary of the Liberal Progressive Tradition

Since the dominant critique of the Reagan administration's handling of the international law on the use of force represents a recent expression of the liberal progressive tradition, I have presented the fundamental elements of that tradition to show where the Reagan administration's critics are coming from and to provide a set of criteria with which to evaluate the conventional critique of the Reagan administration. The concepts in the liberal progressive tradition and the Reagan administration's critics' handling of the concepts will be central to the remaining analysis.

As we have seen, the liberal progressive tradition is a rich historical collection of liberal thought on international politics. The animating objective of the tradition is legal progress — the attempt to control the use of force in international politics through international law. Liberals have variously written about both the political conditions and legal mechanisms needed to achieve legal progress. Interdependence, demilitarization, and democratization represent the political requirements for establishing the rule of law in international politics. Codification, arbitration, adjudication, collective security, and the strict rules prohibiting the use of force and restricting the exercise of self-defense have historically been the requisite legal mechanisms for legal progress. How well the liberal progressive tradition fares in the hands of the Reagan administration's critics when it is confronted by another tradition of liberal thought on international law is the question this article addresses next.

III. THE REAGAN ADMINISTRATION'S PERSPECTIVE AND THE LIBERAL REALIST TRADITION

A. Realism and Liberal Realism

According to its critics, the Reagan administration's violation of the prohibition on the use of force and its abandonment of the American tradition of fostering international law represent the offspring of "realism." The Reagan administration's critics use the realist charge to suggest that the administration rejected liberal values and concerns in order to play power politics. Much of the international legal literature critical of the Reagan administration implies that legal progress is the only credible and worthy tradition of liberal thought on

140. See supra text accompanying notes 27-38.
international politics. "Peace through law," as Shklar points out, "is a cherished aspect of liberal ideology."\textsuperscript{141}

The starting point for understanding the Reagan administration's perspective is realizing that the liberal progressive tradition does not constitute liberal thoughts only, or even its most credible, response to the problem of war and force in international politics. The clash of legal progress and power-thirsty realism repeatedly used in the literature critical of the Reagan administration makes for fine rhetoric, but it is not a sophisticated analysis of the Reagan administration's perspective or of liberal thought's inherent difficulties in dealing with international law and politics. The simplistic approach of the conventional critique of the Reagan administration can be seen when liberal thought's fundamental dilemma in international relations and its responses to that dilemma are analyzed.

This fundamental dilemma can be simply stated: part of the liberal solution to protecting individual freedom from oppression and freedom to participate in self-government is a properly constructed state; but the existence of separate states that answer to no higher authority creates an international system filled with insecurity, competition, and violence.\textsuperscript{142} The liberal answer for domestic politics is the nightmare for international politics.\textsuperscript{143} Liberal thought, therefore, confronted the dilemma of finding a way to ameliorate the mistrust, friction, and conflict between states without eliminating the state, which was the very source of the international problem.

Liberal thought's task was all the more complicated because the domestic and international realms offered thinkers different political and moral dynamics. As Hoffmann points out, domestically "[t]he essence of liberalism is self-restraint, moderation, compromise, and peace . . . . [while] [t]he essence of international politics is exactly the opposite: troubled peace, at best, or the state of war."\textsuperscript{144} Domestic politics offers more room for moral opportunity than the harsher

\textsuperscript{141} Judith N. Shklar, Legalism: Law, Morals, and Political Trials 129 (2d ed. 1986).

\textsuperscript{142} According to Waltz,

\begin{quote}
[t]his is the culminating problem of Kant's philosophy. Men need the protection of law before they have any chance of leading the moral life to which their reason commands them. The civil state is not sufficient. Peace among, as well as within, states is essential to the development of uniquely human capacities. . . . The constant hostility of states and the pressures of recurring war make its fulfillment impossible. How can the problem be solved?
\end{quote}

Waltz, supra note 88, at 334.

\textsuperscript{143} Hoffmann, supra note 44, at 397.

\textsuperscript{144} \textit{Id.} at 396.
dynamics of international politics. In short, the "international milieu is, by nature, inhospitable to liberalism."

This fundamental dilemma provoked four responses from liberals. Liberalism and the liberal progressive tradition represent two of these responses. At the other extreme from legal progress was a third response: realism. The fourth response, liberal realism, falls in between legal progress and realism on the spectrum of liberal responses. The difference between realism and liberal realism, particularly in relation to international law, is central to this article's analysis.

1. Realism

Some liberals have examined the dilemma posed by international politics without devising a way for states to escape the brutal competition of international politics. Rousseau, for example, could offer states no better advice than to be small, weak, poor, and isolated so that no power would have any interest in quarrelling with such a state. Rousseau considered but rejected the solutions of free trade (interdependence), international law, and international federation as either inadequate or impossible for taming the state of war. Although Rousseau viewed war as morally unacceptable, he became a "reluctant realist" because he saw no escape for states from the insecurity, inequality, tension, and violence inherent in international politics. Rousseau compared the fate of nations to "the tranquillity of Ulysses' comrades, shut in the cave of the Cyclops, waiting to be eaten. One must groan and keep silent."

Realism, properly considered, offers states a future filled with either war or fragile truces grounded precariously on reciprocity produced by fear. As Reinhold Niebuhr wrote, under realism "an uneasy balance of power would seem to become the highest goal to which society could aspire." More specifically, realism holds that international law is nothing more than an ineffective moral code

---


146. Hoffmann, supra note 44, at 405.

147. See Introduction, in Rousseau on International Relations, supra note 82, at lxiv-lxv.

148. Id.


because its rules cannot be enforced by or derived from a central source of authority. Further, as Rousseau argued, international law becomes merely another instrument to gain advantages in the state of war. The morality of international law, therefore, is skewed for the benefit of the powerful. According to realism, even the substance of the moral code laid out in international law bears the brutal imprint of the state of war. Far from representing a solution, international law, in Rousseau's imagery, is just another captive in the Cyclops' cave.

2. Liberal Realism

Liberals analyzing international politics rarely embrace realism as Rousseau reluctantly did. Liberal politics and pure realism are incompatible. Realism's tragic cycle of international violence directly threatens liberal principles such that liberals have to alter international political dynamics or individual freedom within the state will face grave peril. Both Rousseau and Kant recognized that the state of war characterizing international politics threatened individual liberty by (i) the ever-present possibility of war; and (ii) the measures taken by the state to prepare for and carry out military security. Thus, the establishment of a liberal state cannot guarantee the rights of the citizens as long as the state of war between nations continues unaltered. Individual liberty has an immediate concern with international peace. Rousseau's despair, therefore, is exceptional in liberal thought. Most liberals, following Kant, believe that not only must something

152. "As for what is commonly called international law, because its laws lack any sanction, they are unquestionably mere illusions, even feeble than the law of nature." Rousseau, supra note 150, at 44.
153. Id.
154. "Justice and truth must be bent to serve the most powerful: that is the rule." Id. at 43.
155. See Rousseau, supra note 150; Rousseau, supra note 82, at 27; Waltz, supra note 88, at 336; and Introduction, supra note 147, at lxvii.
156. Hoffmann writes that liberals reject the realist message:

partly because of the centrality of war in the realists' vision of international affairs and the centrality of revulsion against war in that of the liberals; partly because of the implications of a 'state of war' abroad for domestic society (civil war, or the Prince's tyranny justified by the primacy of foreign policy); partly because of the liberals' concern for individual self-fulfillment, and their sense that this could only be made possible through some breach in the citadel of the state, some measure of cosmopolitanism. Hoffmann, supra note 44, at 401.
be done but also that liberals have a duty to attempt changes in international politics if liberal principles really do have meaning.\textsuperscript{157}

According to most liberals, then, "pure realism can offer nothing more but a naked struggle for power which makes any kind of international society impossible."\textsuperscript{158} The debate between liberals, therefore, does not concern the sterility of pure realism. Liberals divide over what international improvements can be made, how improvements can be made, and how much improvement is really possible. The answers to these questions are what distinguish the liberal realist from the liberal progressive tradition.

The critics of the Reagan administration mistake liberal realism for pure, or classical, realism. The Reagan administration adopted many of the precepts of the "American realist" thinkers, who have dominated the theoretical and practical landscape of international politics in the United States since the end of the Second World War. Post-war realism in the United States and Western Europe differed from classical realism in a crucial respect. Hoffmann explains:

> But what is striking today is . . . that many of the "realists" — especially Hans Morgenthau, George Kennan, and Raymond Aron — either smuggled in or openly injected liberal values and goals whenever they went, beyond empirical analysis, into their own attempt at showing how the jungle could be made livable, how the "right" understanding of the game could make its inevitable perpetuation tolerable.\textsuperscript{159}

A perspective in which empirical realism commingles with liberal values and goals represents a far different concoction than classical realism. While the

\textsuperscript{157} "The statesman's difficulty is that he \textit{must} play the game of international competition, from which he can escape only exceptionally, and at the same time he \textit{ought} not to lost sight of Kant's ideal. He ought not to give up the hope of a future world community, but he cannot act as if it already existed." \textit{Introduction, supra} note 147, at lxxi.

\textsuperscript{158} Carr, \textit{supra} note 27, at 93. Niebuhr agrees: A too consistent political realism would seem to consign society to perpetual warfare." Niebuhr, \textit{supra} note 151, at 231. Carr, in fact, argued further that

> [t]he impossibility of being a consistent and thorough-going realist is one of the most certain and most curious lessons of political science . . . . Every realist . . . is ultimately compelled to believe not only that there is something which man ought to think and do, but that there is something which he can think and do, and that his thought and action are neither mechanical nor meaningless.

Carr, \textit{supra} note 27, at 89, 93.

\textsuperscript{159} Hoffmann, \textit{supra} note 44, at 384. Shklar similarly observes: "American realists today are, however, anything but fascists in the making. They are, in fact, despairing liberals." Shklar, \textit{supra} note 141, at 125.
classical realist offers "a naked struggle for power," the liberal realist tries "to find ways of instilling as many liberal concerns and ideas as possible into a game that . . . cannot be wished away but that, if played as in the past, risks leading us all to destruction and chaos." 160

B. Liberal Realism. International Law & International Politics

1. Liberal Realism, the Reagan Administration, and International Law

The belief that the use of force in international politics could be controlled through international law characterizes the liberal progressive tradition. Liberal realism rejects (1) the notion that international politics will ever function without the threat or use of force; and (2) the idea that international law can control, let alone, outlaw force. Liberal realism, in short, holds that international law can make no significant contribution to the liberal effort to control force in international politics.

Liberal realism, however, unlike classical realism, does not deny that international law exists. Realism insists that rules be enforceable by a common authority before they can be called "law." Liberal realism takes a different approach: reciprocity serves as an alternative source for legitimately providing rules with a legal status. In realism, reciprocity represents merely the temporary and fragile convergence of interests that international political competition threatens to shatter at any moment, and, thus, cannot confer on rules any "legal" significance. Liberal realism, however, contends that mutually respected and obeyed rules between states develop into practices and expectations that gradually solidify into more than the ephemeral convergence of selfish interests. 161 Common interests, through reciprocity, can become common values represented in rules of international law. Reciprocity can produce amongst states a sense that they are bound by the rules both for self-interest and for the good of the international society. Liberal realism, therefore, does not completely reject international law as an instrument for injecting liberal values and interests into international politics.

Liberal realism recognizes, however, that international law's potential contribution to controlling the use of force is very limited unless international political conditions change significantly so that reciprocity will be effective when vital national interests are at stake. Thus, the potential for reciprocity decreases

160. Hoffmann, supra note 44, at 395.
161. Gottlieb argues that "reciprocity lies at the very foundation of international law itself. In the international arena, reciprocity is the true guarantor of obligations . . ." Gidon Gottlieb, How to Rescue International Law, Commentary, October 1984, at 46, 50.
in inverse proportion to the importance of the national interest at stake. Since no national interest is more important than self-preservation and national security, reciprocity will be at its weakest when use of force situations are involved.162 If international political conditions are such that threats to national security are minimized or contained, then reciprocity may have more potential to transform mere interests into law.163

In the liberal realist perspective, the prohibition on the use of force central to the liberal progressive tradition loses much of its legal and moral significance because of the lack of reciprocity.164 The Reagan administration shared this perspective when it focused on the lack of reciprocity in the international system. Ambassador Jeane Kirkpatrick expressed the Reagan administration's view on reciprocity:

But we cannot permit . . . ourselves to feel bound to unilateral compliance with obligations which do in fact exist under the Charter, but are renounced by others. This is not what the rule of law is all about. As we confront the clear and present dangers in the contemporary world, we must recognize that the belief that the U.N. Charter's principles of individual and collective self-defense require less than reciprocity — is simply not tenable.165

In concentrating on reciprocity, the Reagan administration turned the spotlight away from transparent rhetoric to international reality. What the new focus revealed and the Reagan administration publicly challenged was the attitude and practice of the Soviet Union and its allies. The Reagan administration forced people to confront the obvious.166 Soviet bloc policy represented a complete

162. As Rogers notes, "states facing crises that touch on their national interest and security have not been inclined to ask whether a contemplated use of force is legal and pay much attention to the answers." William Rogers, The Principles of Force, The Force of Principles, in Right v. Might, supra note 2, at 103-04.


164. Turner argues that international law "has failed in its effort to eliminate armed conflict for two key reasons: (1) not all states voluntarily accept its underlying principles; and (2) the international legal system currently lacks reciprocity." Turner, supra note 39, at 169.


166. Eugene Rostow writes, "The Soviet Union has taken the position that Article 2(4) does not apply to it, and it has committed acts of aggression in violation of Article 2(4) hundreds if not thousands of times." Eugene V. Rostow, The Legality of the International Use of Force by and from States, 10 Yale J. Int'l L. 286, 287-88 (1985). Higgins notes that the Soviets have contended that (1) the use of force rules of international law do not apply to its relations with its communist allies, which are governed by socialist international legal principles; and (2) it can legitimately
repudiation of the fundamental norm of the international system. In the Soviet bloc perspective, the only time the prohibition on the use of force was effective was in relation to capitalist countries' relations with socialist states. The Soviet bloc position was audacious and unbelievable: the prohibition against the use of force does not affect Soviet bloc policies towards its satellites or enemies, but the prohibition does bind its enemies' policies towards it.167

The Reagan administration perceived the continuation of this attitude towards the use of force in Nicaragua's policies.168 As soon as the Sandinistas consolidated power in 1979, Cuban military advisors and Soviet military equipment began to flow into Nicaragua. The first major foreign policy action taken by the Sandinistas was to help communist guerrillas in El Salvador launch a "final offensive" against the El Salvadoran government. The same pattern the United States had seen in other parts of the world since the end of the Second World War appeared to be repeating itself in Central America.169

Turner argues that one of the major reasons the Reagan administration withdrew from Nicaragua v. U.S. is that the administration believed "that the lack of international reciprocity made the court...an inappropriate forum for the dispute."170 In other words, an ICJ ruling would have made no impact on states already contemptuous of international law. In fact, the Sandinistas continued to support military activity around the world in the name of national liberation from imperialist forces. Rosalyn Higgins, Contending Systems of World Public Order and International Law: An Overview, 25 Atlantic Community Q. 145, 154 (1987). See also W. Michael Reisman, Criteria for the Lawful Use of Force in International Law, 10 Yale J. Int'l L. 279, 280 (1985).

167. Ambassador Kirkpatrick comments:

This dual conception of international law accords to the Soviet Union, then, and to its friends, absolute right and minimal obligations to respect the rights of others while it accords to other states no rights against indirect aggression but an absolute obligation to respect the rights of the Soviet Union and its friends.

Kirkpatrick, supra note 165, at 61.

168. See id.

169. Nicholas Rostow writes:

The real attitude of the Nicaraguan government with regard to international law governing the use of force and self-defense mirrors that espoused in Havana and Moscow. Like Cuba and the Soviet Union, Nicaragua acts on the view that international law permits the support of insurrections in other states against governments it can label 'imperialist,' 'bourgeois,' 'fascist,' and the like, and that the United States may not help such states defend themselves.


170. Turner, supra note 39, at 170.
send arms to El Salvadoran guerrillas even after the ICJ ruling in *Nicaragua v. U.S.* 171

The standard reply to the liberal realist emphasis on reciprocity concerning the rules on the use of force is that the principle of reciprocity should not control the United States' attitude towards those rules: "The fact that the Soviet Union often fails to adhere to these rules does not necessarily justify abandoning them." 172 The liberal realist critique of this unilateral compliance argument is threefold. First, if the rule only has unilateral force, then it no longer has any legal significance but becomes a self-imposed moral obligation. As noted earlier, reciprocity is fundamental to international law. 173 Rules recognized to be devoid of reciprocity cannot be held to be binding legal obligations. Liberal progressives who argue for unilateral compliance can only make moral arguments for compliance.

Second, state practice changes rules of international law. The liberal realist position is that both the conventional and customary strands of the prohibition on the use of force have been altered by state practice. 174 The liberal progressive tradition, however, tries to maintain exactly the opposite position, as evidenced by the ICJ's legal interpretations in *Nicaragua v. U.S.* In relation to the conventional strand of the prohibition on the use of force, article 2(4) of the U.N. Charter, the liberal realist position is that the failure of the U.N. Charter collective security system diminishes the significance of article 2(4). Ambassador Kirkpatrick argued that article 2(4):

---

171. On October 18, 1989, a Honduran border patrol captured a van heading for El Salvador in which they found Soviet AK-47 and American M-16 rifles with ammunition. The van driver "said he had loaded the van with furniture in Costa Rica, and then made a stop-over in Nicaragua." *The Battle for El Salvador*, The Economist, Nov. 18, 1989, at 45. The Sandinistas, according to *The Economist*, "denied having sent fresh weapons to its Salvadoran friends; [but] other reports suggest otherwise." *Id.* On November 26, 1989, a plane registered in Nicaragua crashed in El Salvador. On board, El Salvadoran officials discovered 24 Soviet made SAM-7 antiaircraft missiles, one American made Redeye antiaircraft missile, a 75 millimeter antitank cannon with 21 projectiles, and other military equipment. Documents found in the plane and on the bodies of the dead pilots linked them to Nicaragua. According to diplomats and Salvadoran government officials, this arms shipment "would have far greater implications for regional politics because it indicated that Nicaragua was supplying the rebels with advanced weapons that they have never used before in battle." Lindsey Gruson, *Plane in Salvador with Soviet Arms Crashes and 4 Die: Link to Nicaragua Seen*, N.Y. Times, Nov. 26, 1989, § 1, at 1. *See also* Georges A. Fauriol, *The Shadow of Latin American Affairs*, 69 Foreign Aff. (No. 1) 116, 127 (1990).


173. *See supra* text accompanying notes 161-163.

was never intended to stand on its own, but was to be seen in the context of the entire Charter . . . The structure of the U.N. Charter was accepted by its member states on the expectation of the member states of the effective functioning of collective peacekeeping measures; that is, states would cooperate in the maintenance of world peace. 175

Since the U.N. collective security system never worked, article 2(4) could not carry the same weight as it had in the vision of the Charter's framers. When collective security failed, the inherent right of self-defense contained in article 51 took on a broader significance and increased in importance in the liberal realist perspective because national and regional security had to be provided by traditional means of self-help and military alliances.

The rule advocated in the liberal progressive tradition ignores the failure of one of its own legal mechanisms: collective security. 176 As seen in Nicaragua v. U.S., liberal progressives argued for a broad interpretation of article 2(4) and a narrow reading of article 51. How such a construction can be rendered in light of the complete failure of the U.N. collective security system at the time is not addressed by the liberal progressives, revealing their distaste for legal analysis within political context. Liberal progressives seem content to appeal to article 2(4) as if it enjoyed some type of super-legal status above and beyond the Charter's structure. Liberal realism, as evidenced by the Reagan administration's actions, does not divorce article 2(4) from the rest of the Charter principles in such an arbitrary fashion. Instead, article 2(4) was not placed in the Charter as a Kantian categorical imperative but as one of the rules in a collective security system. 177 The failure of that system negatively impacts upon the significance of article 2(4).

In relation to the customary strand of the prohibition against the use of force, the liberal realist position is that state practice since 1945 has changed the customary rule on the use of force. 178 The ICJ in Nicaragua v. U.S., however, found customary international law to be identical to article 2(4) "without any reference whatsoever to the ways in which governments actually behave." 179 The ICJ's method of interpreting customary law struck many commentators as fundamentally misguided. Franck, for example, writes:

175. Kirkpatrick, supra note 165, at 60.
176. Coll wrote that "the hope that the United Nations can control the use of force in international relations and provide even a degree of collective security in cases involving the most blatant aggression is dead and beyond revival." Coll, supra note 174, at 609. While the end of the Cold War and the United Nations operation during the Gulf War have revived hopes in collective security, such hopes have, however, received fresh abuse in the form of the catastrophe in the former Yugoslavia.
177. Coll, for example, observes that article 2(4) must relate to the U.N. collective security system. Id.
178. See sources cited supra note 174.
Traditionally, a normative principle has been thought to enter into customary law only after being confirmed by practice, that is, after it is demonstrably adhered to by the actual conduct of the large preponderance of international actors capable of violating it. The customary norms cited by the Court are adhered to, at best, only by some states, in some instances, and have been ignored, alas, with impunity in at least two hundred instances of military conflict since the end of World War II. Even the ICJ conceded that violations of the customary rule against the use of force are not infrequent; yet it refused to allow state practice to affect the customary rule. As Franck and Kirgis point out, the ICJ based its finding on customary law on *opinio juris* primarily in the form of U.N. General Assembly resolutions and declarations. D'Amato attacks the ICJ's approach:

The Court . . . completely misunderstands customary law. First, a customary rule arises out of state practice; it is not necessarily to be found in U.N. resolutions and other majoritarian documents. Second, *opinio juris* has nothing to do with 'acceptance' of rules in such documents. . . . [The ICJ] purports to give us a rule of customary international law without even considering the practice of states and without giving any independent, ascertainable meaning to the concept of *opinio juris*.

The liberal realist position is that state practice still drives customary international law, meaning that the customary law on the use of force cannot be identical to article 2(4) because of state practice. The practical effect of this fact to the liberal realist is that the customary right to use force in self-defense becomes broader instead of narrower. The rigid, mechanical rule central to the liberal progressive tradition, in short, does not survive the impact of state practice.

The third liberal realist response to the unilateral compliance argument is that the failure of the U.N. collective security system and the impact of state practice on customary international law erodes much of the significance of the prohibition against the use of force. Coll gives a good description of the liberal realist perspective on what is left: "The obligation embodied in article 2(4) has not been completely destroyed, but it has been altered substantially so

183. *See id.* at 105.
that at most only its core value — the prohibition of clear aggression — remains authoritative."  

Hargrove sounds a similar message when he writes:

The essence of the Charter principles is that . . . a state must refrain from using force against other states, except where force is being used against it. In that case, it is free to defend itself with force as best it can, provided only that its response is reasonably proportionate to the injury being forcibly inflicted and, in fact, necessary to put an end to it.  

The liberal realist perspective favors a more practical, meaningful emphasis on illegal uses of force rather than the liberal progressive effort to distinguish the legal significance between an intervention not amounting to a use of force, a use of force not amounting to an armed attack, and an armed attack. The broader, flexible concept of the illegal use of force represents a more manageable legal framework. As Hargrove argues, the framework used must "be readily perceivable, by people bearing the actual responsibilities of government, to reflect the practical requirements of the world in which states must survive and conduct their affairs. . . . [I]t cannot be full of arcane technicalities or arbitrary distinctions requiring continuous expert exegesis."  

The Reagan administration's legal position on its policy towards Nicaragua embodies the liberal realist framework. The administration considered Sandinista support for the communist insurgency in El Salvador to be an illegal, aggressive use of force to which El Salvador and the United States could respond in collective self-defense. As indicated in the Reagan administration's position, the liberal realist focus was not on legalistic distinctions but on the hostile, violent, and destabilizing behavior of the Sandinista regime. Even one of the fiercest critics of the Reagan administration's attitude towards international law, Senator Moynihan, admitted that "[g]iven the behavior of the Nicaraguan

---

184. Cole, supra note 174, at 608. Eugene Rostow also writes that "it is impossible to determine whether article 2(4) of the Charter is an operative legal norm. On the other hand, it has not yet disappeared as an influence on state behavior or as an aspiration for international law." Rostow, supra note 166, at 290.


186. Id. at 137.

187. According to Abraham Sofaer, the Reagan administration decided "that Nicaragua's support of guerrillas for the purpose of destroying the government of El Salvador" was illegal "and that necessary and proportionate responses, including force, could be taken collectively against such actions." Abraham D. Sofaer, International Law and the Use of Force, Nat'l Interest, Fall 1988, at 53, 58.
government toward at least one of its neighbors, there is, I believe, a right of action there."\textsuperscript{188}

The liberal realist framework corrects another glaring defect in the liberal progressive perspective. The ICJ's distinctions between intervention, use of force, and armed attack invite aggressive regimes to destabilize other governments by means not amounting to an armed attack because the victimized state cannot legally exercise its right of individual or collective self-defense.\textsuperscript{189} Under the liberal progressive rule, a state that falls victim to an intervention or use of force not constituting an armed attack cannot respond with either individual or collective self-defense. The victim state can only take proportional "countermeasures" within its own borders.\textsuperscript{190} A number of unacceptable consequences flow from the liberal progressive view.

First, the liberal progressive view as articulated by the ICJ in \textit{Nicaragua v. U.S.} gives "radical regimes in the contemporary world legal sanction for their policies of covert warfare . . . ."\textsuperscript{191} For example, a state supporting a guerrilla movement in another state does not have to fear military action against itself, meaning that "[s]ource states get a free ride, legally invulnerable to individual or collective response against their own territory, even if the insurgency is planned, trained, armed and directed from there."\textsuperscript{192} Note how closely the liberal progressive position parallels the Soviet concept of international law: socialist states can encourage and support national liberation struggles but bourgeois states cannot use force against socialist countries. As Nicholas Rostow argued, "Nicaraguan support for guerrillas in neighboring states constitutes a unilateral attempt to impose change by the use of force on the ground that a Socialist government has the right under international law to propagate its principles by the sword."\textsuperscript{193} The liberal progressive rule contains nothing to deter states from engaging in covert war against other states.

Second, the liberal progressive view requires states to accept that their inherent right of self-defense is not triggered by a foreign state encouraging, fomenting, and supplying revolutionary forces inside its borders. The ICJ essentially declared that only "armed attacks" narrowly defined threaten the territorial integrity and political independence of a state. In the mechanical liberal progressive scheme, the fundamental right of self-defense becomes contingent on how legal experts assess the violent threat. And, as we noted earlier, liberal

\textsuperscript{188.} Moynihan, \textit{supra} note 12, at 65.

\textsuperscript{189.} \textit{See} Military and Paramilitary Activities In and Against Nicaragua (Nicar. v. U.S.) (Merits), 1986 I.C.J. 14 (Judgment of June 27), ¶ 177 (Schwebel, J., dissent), and Hargrove, \textit{supra} note 185, at 141-42.

\textsuperscript{190.} Franck, \textit{supra} note 180, at 120. \textit{See also} Sofaer, \textit{supra} note 187, at 58.


\textsuperscript{192.} Franck, \textit{supra} note 180, at 120.

progressives viewed this assessment as "a problem of mechanics which it is the
task of technical experts and international organs to solve . . . ." The
cumulative result of the liberal progressive position becomes the following: a
state cannot act in self-defense unless legal experts and international organs deem
the existence of an "armed attack" in the narrow sense even though neither the
experts nor organs have been able to solve the failure of collective security, the
lack of reciprocity in the law, and the dangerous threat of covert aggression.

The liberal realist response to these problems in the liberal progressive
tradition is twofold. First, liberal realism has always considered violent threats
amounting to less than a cross-border invasion as triggering the right of self-
defense. The contemporary liberal realist position does not embrace the robust
right of anticipatory self-defense as it existed in Hamilton's day, but it
certainly considers indirect aggression sufficient to trigger the right of self-
defense. Secretary of State Dulles stated in 1958 that "[w]e do not think that the
words 'armed attack' preclude treating as such an armed revolution which is
fomented from abroad, aided and assisted from abroad." Liberal realism, in
essence, views all illegal uses of force as aggressive armed attacks activating the
right to self-defense. Oddly enough, the U.N. General Assembly Declaration
on Friendly Relations and the Definition of Aggression support the liberal realist
argument that "aggression includes both direct and indirect complicity in all
forms of violence, not just conventional hostilities." The liberal realist
perspective does not create legal loopholes through which violent means escape
the deterrence of self-defense; if a state intends to use force aggressively either
directly or indirectly, then its actions will trigger the victim state's right of
individual and collective self-defense.

194. Brownlie, supra note 62, at 436.
195. Hamilton wrote that there was "no rule of public law better established, or on
better grounds, than that when one nation unequivocally avows maxims of conduct
dangerous to the security and tranquility of others, they have a right to attack her and
to endeavor to disable her from carrying her schemes into effect." Alexander
Hamilton, in The Anglo-American Tradition, supra note 45, at 146. See also David
Lang, Foreign Policy in the Early Republic: The Law of Nations and the Balance of
196. Sofaer, supra note 187, at 55. See also Turner, supra note 39, at 164.
197. Sofaer, supra note 187, at 54.
198. Id. See Declaration on Principles of International Law concerning Friendly
Relations and Cooperation among States in accordance with the Charter of the United
(1970) and Definition of Aggression, G.A. Res. 3314, U.N. GAOR, 29th Sess.,
international system has since 1945 considered support for insurgency groups to be
use of force, aggression, and armed attack. Rostow, supra note 40, at 282.
Interestingly, Turner points out that the equally authoritative French text of the U.N.
Charter article 51 uses the term aggression armee, or "armed aggression," rather than
"armed attack." Turner, supra note 29, at 134 n.6.
Second, liberal realism recognizes that, absent collective security and reciprocity, the right of self-defense cannot be subordinated to formalistic legal rules. As Sofaer argued: "But the right to self-defense is too fundamental for leaders to allow it to be subordinated to any scheme of world order based on theory and wishful thinking, however enlightened."\(^{199}\) Sofaer believes that the Reagan administration properly withdrew from *Nicaragua v. U.S.* because "the President had decided this nation could not allow its right to exercise self-defense to be regulated by the ICJ without its consent."\(^{200}\) The logical effect of narrowly interpreting the right of self-defense as liberal progressives do

is to require a commander in chief confronted by unlawful force, in order to determine whether or how defensive force may be used, to consult lists reflecting the [ICJ's] finely calibrated expert judgment as to what classes of acts are *a priori* militarily significant, or to call in the Court for such military advice on the spot.\(^{201}\)

Such a consultation would prove futile to self-defense anyway since "impossible standards of proof have been set to determine when an armed attack that triggers the right to self-defense has actually occurred."\(^{202}\) The ICJ, for example, seems to require evidence against interest before it will activate its legal rules.\(^{203}\) As many have pointed out, no responsible leader facing the reality of international politics can accept the liberal progressive regime.\(^{204}\)

Liberal realism restores to the state the vitality of its right of self-defense. It allows a state victimized by an illegal use of force to respond with proportional force.\(^{205}\) Thus, the liberal realist perspective on proportionality differs from the artificial hierarchy of proportionate responses found in the liberal progressive tradition. Under the hierarchy of proportionate responses, if an aggressor state supports an insurgency within another state, the top range of the victim state's legitimate proportional response is to support an insurgency in the aggressor state. What if the aggressor state is free from rebellious elements? Can the

---

200. Id. at 62.
201. Hargrove, *supra* note 185, at 139.
203. See infra note 218 and accompanying text.
204. See Hargrove, *supra* note 185, at 139; Sofaer, *supra* note 187, at 59-60; and Franck, *supra* note 180, at 121.
205. Hargrove writes that

[the way to develop a law of force and self-defense that will be taken seriously by real world states is not to appoint the Court or any other body to such a futile function. It is to do what the Charter already does: permit real force to be resisted by force, but scrupulously require that the defense fit the conduct defended against.

Hargrove, *supra* note 185, at 139.
victim state and its allies create an insurgency in the aggressor state as a proportional response? Can the created insurgency be bigger than the aggressor state's involvement in the victim state's guerrilla movement? At what point does a proportionate response become an illegal intervention, use of force, or armed attack?

The liberal progressive hierarchy of proportional responses cannot satisfactorily handle such asymmetrical possibilities. The liberal realist perspective takes a different tact in which proportionality refers not to matching the precise type of violence used by the aggressor but rather to ending the aggressor's illegal activity in the least destructive manner. This means that if the least destructive response would be direct military action by the victim state and its allies against the insurgency support system inside the aggressor state, then such a response is proportional self-defense. Proportionality under liberal realism does not condemn a state victimized by a foreign-supported insurgency to countermeasures within its borders if the aggressor state suffers from no insurgency of its own.

The problem with liberal realism's proportionality perspective is that it requires the weighing of potential consequences of different self-defense responses, which is a very daunting requirement. The requirement raises all kinds of questions about how a liberal realist determines what constitutes the least destructive response to an aggressor's illegal activity in a given situation. Was funding the Contras the least destructive response to Nicaragua's aggressive behavior? As will be examined in Part IV, proportionality questions play a central role in analyzing the Reagan Doctrine as a liberal realist policy.

The liberal realist critique of international law on the use of force is much more sophisticated than the realist rejection of international law. Even with the failure of all the liberal progressive tradition's legal mechanisms, liberal realism maintains that rules still apply to the use of force and self-defense. The lack of reciprocity erodes much of the legal status of the rules, producing a liberal-based ethic that tries to accommodate realistic conclusions about the state of international relations with liberal goals. Now, the second strand of the liberal realist critique of the liberal progressive tradition will be traced.

2. Liberal Realism and International Politics

The fundamental confusion in the liberal progressive tradition is whether changes in international political conditions (interdependence, demilitarization, and democratization) will produce the legal mechanisms needed for legal progress or whether adopting the legal mechanisms will lead to the political conditions needed for legal progress. In most of the criticism of the Reagan administration, attention focuses on the legal mechanisms without much, if any, reflection on the then-existing international political conditions facing American foreign policy. Liberal realism insists in the strongest possible terms that political conditions will determine the strength or weakness of international law. While the liberal progressive tradition sees law as superseding politics, liberal realism
views international law as a reflection and continuation of international politics by other means.

The tendency for lawyers and jurists to consider law as distinct from politics has been noted in both the domestic and international realms. Shklar calls this tendency "legalism" and comments that legalism's "urge to draw a clear line between law and non-law has led to the constructing of ever more refined and rigid systems of formal definitions. This procedure has served to isolate law completely from the social context within which it exists."206 The response to the attempt by orthodox American legal thinkers to separate law and politics in domestic society was the "legal realist" movement of the interwar period,207 which challenged the notion that law and politics could be divided into independent spheres.

In international relations, the liberal progressive tradition saw "the replacement of politics by law as the solution to all the problems of international conflict."208 The liberal progressive interpretation of the prohibition on the use of force, with its hierarchy of thresholds and responses developed from strict conceptual analysis, matches the description of an "ever more refined and rigid system of formal definitions" characteristic of legalism.209 Liberal realism, in many respects, serves as a response to the legalism of the liberal progressive

206. Shklar, supra note 141, at 2. The urge manifested itself in domestic American legal thought in the late nineteenth century: "The effort of late 19th century orthodox legal thinkers to create an autonomous systems of legal doctrine was the most important expression of their desire to sharply separate law from politics. . . . Above all, they sought to represent legal reasoning as fundamentally different from political or moral reasoning . . . ." Morton Horwitz, Reinterpreting Legal Realism 64 (1990) (unpublished manuscript, Harvard Law School).

207. See Horwitz, supra note 206, at 4 ff.

208. Shklar, supra note 141, at 139.

209. Shklar notes that the idea of legal progress is "a matter of projecting . . . legalism onto the world scene. Just as domestic society is seen in terms of legalistic categories, so is the international world." Id. at 142. The attempt to purify international law from international politics appeared during the Reagan years in abundance. Henkin, a critic of the Reagan administration, provides an example of legalistic thinking:

In our decentralized international political system with primitive institutions and underdeveloped law enforcement machinery, it is important that Charter norms . . . be clear, sharp, and comprehensive; as independent as possible of judgments of degree and of issues of fact; as invulnerable as can be to self-serving interpretations and to temptations to conceal, distort, or mischaracterize events. Henkin, supra note 2, at 60. Falk, another Reagan administration critic, attempts the same purification: "It challenges, as well, the conscience of American citizens, raising the crucial question as to whether we believe the national interest is served by a foreign policy that is not bound by impartial interpretations of international law." Falk, supra note 106, at 108.
tradition. Similar to the legal realist, the liberal realist on the international level rejected the liberal progressive tradition's tendency to subordinate politics to legal reasoning and "acknowledge[d] that law is a form of political action, among others, which occasionally is applicable and effective and often is not. It is not an answer to politics, neither is it isolated from political purposes and struggles." 210

The stark contrast between the liberal progressive and liberal realist traditions on this point vividly appeared in Nicaragua v. U.S. Counsel for Nicaragua argued, and the ICJ agreed, that the use of force issues central to the dispute were susceptible to resolution by legal reasoning. 211 The Reagan administration contended that conflict in Central America could not and would not be resolved or even helped by an ICJ attempt to substitute law for politics. 212 The Reagan administration further believed that Nicaragua's motive in filing the suit had nothing to do with legal progress but instead represented audacious realpolitik. 213 While the Reagan administration argued about political circumstances and conditions, liberal progressives focused on the prohibition on the use of force and the ICJ. The liberal progressive argument that, even if the political claims of the Reagan administration against Nicaragua were true, the United States, nonetheless, acted illegally symbolizes the extent to which the Reagan administration's critics subordinated political reality to legal reasoning. As Rostow pointed out, "[c]ritics of the United States' policy towards Nicaragua tend to slide over, or ignore, evidence of Nicaragua's support for revolutionary activity" in Central America. 214

Nicaragua's American lawyers, Abram Chayes and Paul S. Reichler, both slid over political conditions. Chayes stated that "whatever Nicaragua has done, it has not launched an armed attack on anybody." 215 The focus seems to be exclusively legal: the conception of "armed attack." Chayes appears to make no effort to examine what Nicaragua actually did and the political and moral ramifications of such behavior. Reichler slid over politics by calling the Reagan administration's motives "cynical." 216

210. Shklar, supra note 141, at 143.
211. See supra text accompanying notes 120-139.
212. See discussion on reciprocity supra text accompanying notes 164-171.
213. Ambassador Kirkpatrick wrote:

For Nicaragua, the party that has initiated the violation of international law through the use of violence against its neighbors, to seek recourse before the International Court of Justice amounts to nothing more or less than a cynical effort aimed at influencing world opinion, Congressional votes, and performing all the other functions of propaganda. Nicaragua seeks, in short, to use the Court in a blatantly propagandistic manner.

Kirkpatrick, supra note 165, at 65.
214. Rostow, supra note 193, at 441.
administration's accusations of Nicaraguan involvement in El Salvador's civil war "simply falsifications designed to justify an otherwise indefensible policy."216 The many sources implicating Nicaragua in exporting revolution and terror in Central America must represent, under Reichler's theory, a grand conspiracy of falsification between the Reagan administration, other governments, the media, and universities.217

The ICJ's handling of the facts and circumstances also proved characteristic of the liberal progressive proclivity to ignore political realities. Two examples from the case are illustrative. First, the ICJ decided that El Salvador had made no request for the United States' help and had not declared itself a victim of Nicaraguan aggression. As Moore and Turner point out, El Salvadoran leaders in public statements repeatedly complained about Nicaragua's aggression against its people and their need for American assistance to resist the aggression.218 Apparently, the ICJ would be satisfied with nothing short of a special, formalistic public announcement, which supposedly has legal significance beyond repeated public statements by public officials. The ICJ makes no attempt to explain why it took this position beyond an obvious skepticism towards the veracity of El Salvador's claims because of its close association with the United States. Further, Moore wonders "how the majority of the Court could maintain this position in the face of the Salvadoran petition to the Court manifestly declaring the attack and assistance, and the Court's own denial of El Salvador's request to appear, is, if possible, even harder to understand."219 Apparently, not only did the ICJ want a formal proclamation but it also wanted that proclamation

216. Reichler & Wippman, supra note 12, at 463.
217. Reichler and Chayes, moreover, never did get their story straight. In 1985, they admitted to the New York Times that "the Managua Government supplied weapons to Salvadoran guerrillas for the big January 1981 offensive against the United States-backed Government in El Salvador." Shirley Christian, Nicaragua's Lawyers Prepare Case, N.Y. Times, Sept. 8, 1985, at A23. Yet, as counsel to Nicaragua, they allowed Nicaraguan officials to testify before the ICJ that Nicaragua had never supplied any assistance to Salvadoran rebels. See Military and Paramilitary Activities In and Against Nicaragua (Nicar. v. U.S.) (Merits), 1986 I.C.J. 14 (Judgment of June 27), at ¶ 24 (Schwebel, J., dissent). Then, Chayes' and Reichler's "key witness to rebut the United States charge that the Sandinistas were aiding the Salvadoran guerrillas," Christian, supra, at A23, David McMichael, a former C.I.A. analyst, admitted under questioning from Judge Schwebel that he believed that "the Nicaraguans supplied arms to the Salvadoran insurgency." U.S. Policy Goes on Trial, N.Y. Times. Sept. 30, 1985, at 85. Then, in a 1986 article, Reichler stated that "even if it were true that Nicaragua provided support to the Salvadoran guerrillas for their January 1981 offensive . . . ." Reichler & Wippman, supra note 12, at 466. Such factual gymnastics do not inspire confidence in the integrity of Chayes' and Reichler's handling of political fact and circumstance.

219. Moore, supra note 191, at 155; see also Sofaer, supra note 187, at 58.
to have been given at an earlier, unspecified time. This decision shows the imprint of legalism.

Second, the ICJ formulated evidentiary rules that epitomize legalistic reasoning. The ICJ gave more weight to evidence "against interest" than to "self-interested" evidence. The ICJ said that testimony "emanating from high-ranking official political figures, sometimes indeed of the highest rank, are of particular probative value when they acknowledge facts or conduct unfavorable to the State represented by the person who made them. They may then be construed as a form of admission." The ICJ, therefore, thought that disinterested witnesses and evidence against interest were more credible. These evidentiary rules are bizarre when one considers that the litigants represent a closed, totalitarian society and an open, democratic society. Franck comments:

The principal disadvantage to the United States, however, derives from the nature of fact-centered litigation pitting a closed against an open society. Nicaragua was able to prove its allegations of fact almost entirely with evidence provided by Americans, ranging from statements made by the President to assertions by members of Congress, a former CIA agent, journalists, academics and human rights investigators. This gave Nicaragua an enormous litigating advantage over the United States, which could scarcely expect a closed society to permit its citizens to provide evidence of Nicaragua complicity in the El Salvador insurgency. Indeed, Nicaraguan officials uniformly attested to the nation's innocence of all wrongdoing. Inevitably, the United States had to rely on photographs, documents and statements, much of which the Court... appeared to discount as "self-serving."

The ICJ's evidentiary rules assume in a very formalistic manner that the two litigants are just alike: two non-descript states before an impartial tribunal. The ICJ, with the exception of Judge Schwebel, never asks if the nature of the two political regimes has any significance in the case. The ICJ's handling of the evidence reflects a presumption that once states come before the Court critical political issues play no role in finding facts. This is legalism in its highest form.

Critics of the Reagan administration complained that the administration twisted international law to fit politics. The examples of Chayes, Reichler, and the ICJ, however, show liberal progressives skewing politics to configure with rigidly interpreted rules of international law. There is, however, a deeper point

220. Franck, supra note 180, at 117.
221. Id. See also Moore, supra note 191, at 159.
222. See Military and Paramilitary Activities In and Against Nicaragua (Nicar. v. U.S.) (Merits), 1986 I.C.J. 14 (Judgment of June 27), ¶ 139 (Schwebel, J., dissent). The New York Times reported that Judge Schwebel was "the only judge to question Nicaragua's witnesses in depth." U.S. Policy Goes on Trial, supra note 217, at 85.
here that captures a fundamental problem liberal realists have with the liberal progressive tradition. While the liberal progressive tradition historically included a belief that legal progress depended on establishing measurable interdependence, demilitarization, and democratization, liberal progressives, at least in the *Nicaragua v. U.S.* context, curiously do not address the manifest lack of any of the political conditions deemed necessary for legal progress. Where is the argument that the Reagan administration should respect the legal rules and institutions of legal progress because the international system enjoys tangible interdependence, demilitarization, and democratization? Such an argument, of course, cannot be made because the "legalistic approach to peace yielded only principles and rules, not security of expectations among states, nor a legal community." Legal progress, in other words, has made no impact on international politics.

Chayes, Reichler, and others neglect the political aspect of their own liberal progressive tradition. The neglect, moreover, reached perverse proportions in *Nicaragua v. U.S.* In this case, liberal progressives worked for, supported, and cheered the use of international legal mechanisms by a Marxist-Leninist dictatorship run by individuals whose ideology, intentions, actions, and allies repeatedly proved hostile to liberal values and politics. When critics of the Reagan administration emasculated the idea of legal progress by neglecting political conditions in siding with a dictatorship, they tainted an honorable tradition.

Liberal realism, however, concentrates on the very political conditions neglected by liberal progressives in *Nicaragua v. U.S.* The lack of meaningful interdependence, demilitarization, and democratization in international politics drastically reduces international law's potential to make tangible contributions to the liberal objective of controlling force in international politics. Liberal realism

223. As Aron stated, "those who want to be idealists have an almost unlimited capacity for not seeing reality." Raymond Aron, *Peace and War* 710 n.7 (1966).

224. Shklar, *supra* note 141, at 140.

225. As Bull pointedly asks, "Is the 'progress' of international law in our own times, perceived by the international lawyers, anything more than its heightened protest against the facts of international politics?" Bull, *supra* note 28, at 151. Aron also asks:

Should we conclude that international law is making progress or is in decline? . . . Personally, I confess I cannot see much progress . . . . One does not judge international law by peaceful periods and secondary problems. With regard to crises, that is, international conflicts, one would seek in vain for a symptom of progress. If the goal is peace by law, we are still as far away from it as ever. If the goal is merely the limitation of a war that is legal for both belligerents, we are further from the goal than at any other moment since the end of the wars of religion.

Aron, *supra* note 223, at 731, 733.
argues that liberal thought "needs to free itself from the illusions of 'the rule of law' ideologists" because such illusions only "prevent[] liberalism from facing up to the realities of contemporary politics." 226 The belief in the possibility of legal progress plays a large part in "the rather colossal fiasco of liberalism in world affairs . . . " 227

C. The Liberal Realist Ethic

1. The Spirit of the Ethic

Liberal realism, as noted above, does not descend to the pessimism of classical realism. Instead, liberal realism represents a different kind of realism, one that "discerns a hopefulness — no less significant for its remarkably low opinion of human nature; the promise of cleverly designed checks and balances and a shrewdly exercised prudence reveal a limited but genuine faith in the possibility of international progress." 228 Liberal realists, in other words, refuse to groan and keep silent in the cave of the Cyclops.

The liberal realist tradition embodies the attempts of liberal realists to strike a balance between recognizing harsh international realities and preserving liberal principles and hopes. The balance, however, cannot be struck by legal reasoning alone. Alexander Hamilton was one of the first individuals to formulate a liberal realist perspective, and his thinking still manages to capture the essence of liberal realism. 229 Hamilton the realist argued that hoping "for a continuation of harmony between a number of independent, unconnected sovereignties . . . would be to disregard the uniform course of human events, and to set at defiance the accumulated experience of the ages." 230 He warned against "the tenets of those who endeavor to lull asleep our apprehension of discord and hostility between the States . . . " 231 The primary consideration and duty of the statesman, therefore, was vigilant self-interest; 232 the statesman has to filter all legal and moral concerns through self-interest. 233

Hamilton the liberal argued that the statesman's conception of self-interest should not be narrow and unyielding. Hamilton believed that notions of self-

226. Shklar, supra note 141, at 142.
228. Gellman, supra note 37, at 262.
229. Coll writes that "it was Hamilton who best embodied the early republic's thoughtful realism towards international law underlying the founders' public pieties." Coll, supra note 5, at 109.
230. Hamilton, supra note 195, at 140.
231. Id. at 142.
232. Id. at 143.
233. Id. at 146.
interest should include moderate goals and a respect for the legitimate interests of other states. He wrote that in international affairs "it is of real importance to conciliate the good opinion of mankind." Hamilton favored moderation in statesmanship because:

we ought not lightly to seek or provoke a resort to arms, that, in the differences between us and other nations, we ought carefully to avoid measures which tend to widen the breach; and that we should scrupulously abstain from whatever may be construed into reprisals, till after the employment of all amicable means has reduced it to a certainty that there is no alternative.

Finally, Hamilton cautioned that self-interest should be sensitive to the fallibility of the statesmen at the helm. Hamilton the liberal realist, then, conceived of a self-critical foreign policy of "[j]ustice and moderation, united with firmness . . . " Hamilton's liberal realism led him to believe "that to respect international law was to the benefit of the United States and that a reputation for gross violations of it would damage the nation's commercial and diplomatic interests. However, the often unclear rules of international law had to take account, and be interpreted in light of, U.S. self-interest."

The same integration of liberal purpose and political realism appears in the thought of another key figure in the liberal realist tradition: Reinhold Niebuhr. Niebuhr played a central role in the re-invigoration of liberal realist thought at the end of the Second World War. According to McGeorge Bundy, Niebuhr was "probably the most influential single mind in the development of American attitudes which combine moral purpose with a sense of political reality."239

234. Id. at 148.
235. Id. at 154.
236. Id. at 147.
237. Id. at 151. Wolfers notes that Hamilton's analysis belongs to an Anglo-American tradition in which "statesmen were urged to combine two basic goals: one, the primary though prudently conceived objective of self-preservation . . . the other implied in such prudence, a fulfillment of the moral law to the maximum compatible with the primary duty of defense." Wolfers, supra note 145, at xxvii. Coll observes a continuation of this liberal realism in the Republican internationalists of the early decades of the twentieth century; individuals like Lodge, Taft, and Hughes "were aware, as Hamilton was, of the distinctiveness of the international arena and of the need to balance a judicious respect for international law and organization with calculations of U.S. self-interest." Coll, supra note 5, at 109-10.
239. Richard W. Fox, Reinhold Niebuhr and the Emergence of the Liberal Realist Faith, 1930-1945, 38 Rev. of Pol. 244, 245 (1976). George Kennan said of Niebuhr: "He was the father of us all." Id.
Niebuhr captured the liberal realist perspective on political force, power, and violence when he wrote that

\[
\text{[a]n adequate political morality ... will try to save society from being involved in endless cycles of futile conflict, not by an effort to abolish coercion in the life of collective man, but by reducing it to a minimum, by counselling the use of such types of coercion as are most compatible with the moral and rational factors in human society and by discriminating between the purposes and ends for which coercion is used.}^{240}
\]

Hamilton's and Niebuhr's teachings indicate that a liberal realist foreign policy seeks to craft an international order capable of sustaining international intercourse characterized by minimal force and violence. If statesmen manage to create the requisite political conditions, then a realistic perspective on international politics will have been a productive ally of liberal principle and purpose.

One could argue that seeking moderation in international violence can be a goal of realism, in that moderation best suits self-interest without regard to liberal values. It would seem to be difficult to distinguish between a realist arguing for moderation and a liberal realist arguing for moderation. This difficulty does indeed exist, but the distinction is still valid and important. A realist may argue for moderation in the use of force because moderation confers benefits on his state. Self-protection and self-aggrandizement are realism's only substantive goals; the political nature of the regime does not matter. Prudence serves as the guiding principle of realism, but prudence is relative to whatever values the realist subscribes. The neutral prudence principle forms part of realism's "ethics of struggle."^{241}

A liberal realist always argues for moderation of international violence because unrestrained force threatens not only the security of the liberal state but also liberal values such as individual rights, democracy, international order, and human solidarity. Liberal realism's guiding ethic is a mixture of prudence and conviction.^{242} The liberal realist Aron captured this mixture in what he called an

240. Niebuhr, supra note 151, at 233-34.
241. The term "ethics of struggle" is Raymond Aron's. See Stanley Hoffmann, Raymond Aron and International Relations, in Janus and Minerva, supra note 37, at 63.
242. This mixture is similar to Wolfer's definition of prudence: "expediency guided and moderated by morality and wise judgement." Wolfer, supra note 145, at xiii. Coll's analysis is similar as well: "Prudence is not only a moral and political objective, but also a form of ethical reasoning .... The two key elements of prudence are the effort to balance competing and worthwhile goals, and the definition of a moral or legal obligation by reference to its particular context." Coll, supra note 174, at 614. The liberal realist concept of an ethic of prudence and conviction has its original roots in Locke, who wrote that in foreign affairs the state "is much less capable to be
"'ethics of wisdom' which takes into account both the necessity to calculate forces, i.e. the duty of selfishness which states must obey, and the aspiration to universality, i.e. to a victory of that part of human nature which is not a 'beast of prey.'" 243 The mixture of prudence and conviction characterizes the liberal realist ethic.

There is no magic formula in balancing prudence and conviction in the liberal realist ethic. In relation to the use of force, the immediacy of the threat or use of force and the potential damage inevitably makes the balance favor prudence. Since the liberal progressive tradition promotes an ethics of law, which is essentially an ethics of conviction, 244 it fails to integrate adequately prudential concerns, particularly concerns raised when there is little reciprocity on the international law on the use of force. Liberal realism's prudential presumption in relation to force means that liberal conviction has limited scope. Liberal realism's objective of minimizing force in international politics, therefore, restricts what can be done for individual rights, democracy, international order, and human solidarity. If liberal realist policies succeed in establishing needed political conditions for controlling international violence, then the limitations on other liberal values will become less severe. Only in certain circumstances, then, can prudence and conviction converge.

The tension in the liberal realist ethic between prudence and conviction, and the influence of political conditions on that tension, is evident in the liberal realist perspective on the rules on the use of force. Under liberal realism, any illegal use of force (direct or indirect aggression) by a state triggers the right to individual and collective self-defense. Any action taken in self-defense must be proportional, meaning that the least destructive response should be taken. The problem, then, becomes determining whether the benefits expected in terms of self-interest and liberal values outweigh the undesirable consequences to self-interest and liberal values.

2. The Reasoning of the Ethic Regarding Aggression

The liberal realist ethic combines deontological and utilitarian reasoning. This mixture produces a set of rules and assumptions for cases of direct and indirect aggression. In the case of direct aggression, the deontological rule would be that a liberal state can respond in individual self-defense to direct aggression directed by antecedent, standing, positive laws . . . and so must necessarily be left to the prudence and wisdom of those whose hands it is in to be managed for the public good.” Hoffmann, supra note 44, at 397. See also Aron, supra note 223, at 722.

243. Hoffmann, supra note 241, at 63.

244. Liberal progressivism "was moralistic . . . insofar as the legal rules that would become supreme embodied either the Kantian ethics of unconditional and universal categorical imperatives (e.g. avoidance of aggression, and of violations of treaties) or the utilitarian ethics of the greatest good for the greatest number." Hoffmann, supra note 37, at 75.
against itself or in collective self-defense when another state suffers direct aggression. This rule is identical to the liberal progressive conception of self-defense in cases of armed attack. The utilitarian rule in the case of direct aggression is that the least destructive force should be used, which is that effective force that credibly will produce the least harm to self-interest and liberal values. This rule closely resembles the proportionality requirement in the Christian Just War theory: that the force used be proportional to the stakes.\textsuperscript{245} In cases of direct aggression, the stakes for self-interest are likely to be high, which will lead to the use of very destructive force at the expense of liberal values (e.g., the killing of civilians). The utilitarian rule of the liberal realist ethic, therefore, means that the least destructive force implies that the foreseeable and actual harm to liberal values be reduced as much as possible.\textsuperscript{246}

An important assumption accompanies these deontological and utilitarian rules. The liberal realist ethic assumes that a victim of direct aggression is worthy of collective self-defense from the perspectives of liberal self-interest and values.\textsuperscript{247} The legitimacy of the use of force in collective self-defense against direct aggression, then, depends on political context.\textsuperscript{248} The American experience in Vietnam demonstrates the importance of this liberal realist assumption. The official American position that the United States responded in collective self-defense of South Vietnam against aggression from the North lacked legitimacy because the South Vietnamese government was not democratic. The legal principle that direct aggression can legitimately be opposed by collective self-defense is not ethically compelling when a corrupt, inept, and illiberal government controls the victim state. The Vietnam experience illustrates the inherent tension in the liberal realist ethic between self-interest (strategic and

\textsuperscript{245} On the Christian Just War theory, see Hoffmann, \textit{supra} note 63, at 47 ff.

\textsuperscript{246} I borrow this idea from Walzer's revision of the Christian Just War theory's principle of double effect. \textit{See} Michael Walzer, \textit{Just and Unjust Wars} 151-59 (1977). The principle of double effect holds that if the morally acceptable effects of a legitimate use of force outweigh the unintended evil effects (e.g., killing of civilians), then the resort to force is just. Walzer revises this principle because he believes it "provides a blanket justification." \textit{Id.} at 153. Instead, Walzer demands "that the foreseeable evil be reduced as far as possible." \textit{Id.} at 155.

\textsuperscript{247} This assumption is also implicit in the Christian Just War theory. Just War theorists in medieval times, for example, would not have argued that the Just War theory applied to aggression between two infidel states, nor probably if a Christian state attacked an infidel nation. The Christian Just War theorists built the doctrine upon an understanding of the shared interests and values of Christendom, which means that the theory had an inherent test of moral legitimacy and worth. \textit{See} Hoffmann, \textit{supra} note 63, at 50.

\textsuperscript{248} Under the liberal progressive position, however, an armed attack in whatever context triggers all the rights of self-defense. The liberal progressive principle is designed to be neutral and therefore legally precise, which is why the behavior of states does not correspond to liberal progressive neutral, sharp legal rules. The liberal realist ethic, by contrast, recognizes the moral importance of context and attempts to include it.
political threat of totalitarian aggression) and liberal values (the human cost of ending North Vietnamese aggression). Although containing aggression is itself a liberal value, it does not have hegemony in the liberal kingdom of ends. The solution to this problem is to improve the political conditions of the international system so that aggression and force are minimized.

In cases of indirect aggression, the deontological rule holds that a liberal state can respond in collective self-defense with a state victimized by indirect aggression. The utilitarian rule is the same as in the case of direct aggression: only the least destructive force should be used, which is that force that will stop the aggression and credibly produce the least harm to self-interest and liberal values. A number of important assumptions accompany these rules. First, as in the case of direct aggression, the victim state must be worthy of collective self-defense by a liberal state. In the case of indirect aggression, however, the moral worth of the victim state comes under much closer scrutiny because (1) its legitimacy is being challenged by internal insurgents; and (2) collective self-defense against indirect aggression holds the potential for serious escalation in military violence. Second, the liberal realist ethic assumes that the indirect aggression could not be stopped by diplomatic or economic means. Third, the least destructive force must have a credible chance of success.\(^{249}\)

3. The Ethic and the Reagan Administration's Collective Self-Defense Argument

In keeping with the liberal realist tradition, the Reagan administration argued that its policy towards Nicaragua was justified by collective self-defense because of Nicaragua's indirect aggression against El Salvador. The Reagan administration selected two force responses to Nicaragua's indirect aggression: direct United States mining of Nicaraguan harbors and support for the Contra rebels.

The Reagan administration had a strong case that Nicaragua engaged in indirect aggression against El Salvador. Two days after Nicaragua filed its application against the United States in the ICJ the \textit{New York Times} reported that "Western European and Latin American diplomats [in Managua] say the Nicaraguan Government is continuing to send military equipment to the Salvadoran insurgents and to operate training camps for them inside Nicaragua."\(^{250}\) Further, "Western diplomats appear to be convinced of the general

\(^{249}\) The second and third assumptions borrow from the Christian Just War theory as well. The Christian Just War theory held that force must be a last resort and that the force used must have a reasonable chance of success. Hoffmann, supra note 63, at 48.

accuracy of American reports on the military ties between Nicaragua and the Salvadoran rebels."\textsuperscript{251} In Senator Moynihan's words, the United States had "a right of action" against Nicaragua.\textsuperscript{252} The Reagan administration, thus, seems to have cleared the deontological hurdle of the liberal realist ethic.

Liberal progressives, however, effectively managed to weaken the Reagan administration's deontological stance. The administration had to spend a considerable amount of energy trying to convince people that the Sandinistas were indeed engaged in indirect aggression against El Salvador. The argument of Nicaragua's counsel before the ICJ that the Sandinistas had once sent some arms to the Salvadoran rebels but that Nicaragua "was not supplying arms to El Salvador either now or in the relevant past"\textsuperscript{253} bedeviled the Reagan administration because the issue had been framed in the public eye as a simple problem of legal evidence and proof. This legalistic paradigm began to shape the public debate. A \textit{New York Times} editorial advocated that "the Administration produce its evidence, proclaim its countermeasures and justify them by the norms of United States democracy and foreign policy."\textsuperscript{254} Ironically, that editorial appeared in the same issue of the \textit{New York Times} as the report that Western European and Latin American diplomats in Managua were convinced that the United States was right about the indirect aggression of the Sandinistas. Unfortunately, the Reagan administration allowed the legal progressives to set the framework for the debate, which indicates both the strength of the legal progressive tradition and the Reagan administration's failure to appreciate that strength.

The second problem the Reagan administration had at the deontological step of the liberal realist ethic was in assuming that El Salvador was a morally worthy state for American collective self-defense. The specter of right-wing death squads haunted the Reagan administration's efforts to build support for El Salvador's democratic potential. Duarte's election in 1984 and his subsequent efforts, however, improved El Salvador's image and eased the Reagan administration's burden. Nonetheless, the specter had proven extremely difficult to shake; and the Reagan administration's deontological case suffered as a result.

The Reagan administration had even more problems with the means with which it came to the collective self-defense of El Salvador. The Contra policy will be examined in Part IV, but here I will analyze the mining of Nicaragua's harbors. To abide by the liberal realist ethic, the mining of Nicaragua's harbors must have (1) been a last resort measure; and (2) had a credible chance of contributing to the successful termination of Nicaragua's support for El

\textsuperscript{251} Kinzer, \textit{ supra} note 250, at A1.
\textsuperscript{252} Moynihan, \textit{ supra} note 12, at 65.
Salvador's rebels. Further, the harbor mining had to be the least destructive alternative.

The Reagan administration ran into serious difficulties on the utilitarian step of the liberal realist ethic. Since the Reagan administration mined harbors in February-March 1984, it is difficult to argue that the mining constituted a measure of last resort. Second, the mining strategy did not have a credible chance of contributing to the termination of Nicaragua's support for El Salvador's rebels because Americans were not barred from trading with Nicaragua in 1984, which meant that American nationals and property were at risk of being mined by American-laid mines. If an American ship had been sunk by one of the mines, then the entire Reagan administration policy in Central America might have collapsed like a house of cards in the wake of the domestic political backlash. Third, it is doubtful that the mining constituted the least destructive alternative for two reasons. First, American self-interest would have been badly damaged if the mines had sunk American vessels or those of allied or friendly states. Obviously, the idea was to stem the flow of military supplies from Cuba and the Soviet Union; but mines are indiscriminate weapons, incapable of picking out Cuban and Soviet arms vessels from commercial ships. Second, the victims of mine explosions would most likely be civilian merchant seamen, which raises the question of protecting liberal values.

Although the liberal realist tradition informs the Reagan administration's collective self-defense argument, the mining policy does not seem compatible with the utilitarian rule and assumptions of the liberal realist ethic on indirect aggression.

D. Political Goals of the Liberal Realist Tradition

The final part of the liberal realist tradition addresses the international political conditions that the liberal realist ethic needs to lessen the tension between self-interest and liberal values in situations involving the use of force. The two critical conditions are a balance of power and a trend favoring the spread of liberal democracy in the international system. The behavior of the Reagan administration exhibited concern for these two conditions of the liberal realist tradition, further strengthening the case that the Reagan administration was not working under purely realist assumptions.

255. See Martin Tolchin, Senate, 84-12, Acts to Oppose Mining Nicaraguan Ports; Rebuke to Reagan, N.Y. Times, Apr. 11, 1984, at A1.
1. The Balance of Power

For the liberal progressive tradition, the balance of power symbolized all that was repugnant about international politics. The evil perpetuated under the balance of power inspired liberal progressives to search for principles of international order based on law. From the perspective of the liberal realist, however, the liberal progressive legal alternatives to the balance of power fail to provide foundations for international order. The liberal realist perspective also does not see the balance of power as hostile to international law; in fact, it views the balance of power as a necessary condition for the functioning of international law.

The liberal realist tradition has, since the days of Hamilton, appreciated a close relationship between the balance of power and international law. This close relationship figured prominently in the thought of Vattel, who greatly influenced statesmen and diplomats in the latter part of the eighteenth century. As Lang notes, Vattel and those he influenced argued that "a balance of power system presented perhaps the only guaranty of the public law of Europe." The relationship between the balance of power and the law of nations was so close in Hamilton's opinion that maintaining the balance of power was part of the law of nations in that states could punish a state threatening the balance.

The idea that international law needs a balance of power represents a recognition that international law cannot properly function without some type of international order. Since the eighteenth century, and perhaps earlier, the balance of power has been a mechanism for providing order in a world of independent, sovereign states. As the liberal progressives have pointed out, the balance of power contains the potential for dangerous disorder as well. Absent a better mechanism that has a realistic chance to supersede it, however, the balance of power remains the basic source of international order. As such, international law relies on the order produced by the balance of power created by the states in the international system.

Under the influence of the liberal progressive tradition, the balance of power virtually disappeared from international legal literature in the twentieth century.

258. Lang, supra note 195, at 101.
260. "As many international lawyers in the eighteenth and nineteenth centuries freely recognized . . .," Coll observes, "international law prospers best in the soil of a balance of power." Coll, supra note 5, at 110-11. Perhaps the most famous statement adhering to the international legal importance of the balance of power came from a progressive, Oppenheim, who wrote that the balance of power is "an indispensable condition of the very existence of International Law." Vagts & Vagts, supra note 257, at 570.
From the liberal realist perspective, this neglect of the balance of power constitutes a fundamental mistake. Even some liberal progressives critical of the Reagan administration acknowledge the validity of the liberal realist emphasis on a balance of power. Under the liberal realist view, a balance of power provides support for reciprocity in international law and deters aggression. The balance of power is supposed to be a moderating influence on the behavior of states, helping to minimize violence in international relations. As a result, the balance provides security for content states and disincentives for discontented states desiring to upset the status quo. Thus, liberal realism recognizes that liberal states must keep watch over the balance of power and must be ready to act, with force if necessary, to uphold the balance of power from aggressive, violent efforts to change it.

The Reagan administration's foreign policy exhibited the concern with the balance of power characteristic of the liberal realist tradition. As Tucker points out, the Soviet Union clearly "was making a serious bid to expand its global position and influence" at the end of the Carter administration. The Soviet bid to change the balance of power most dangerously manifested itself in increasing Soviet superiority in conventional and nuclear military power and in expanding Soviet activity in the Third World. Ambassador Kirkpatrick hammered on these same themes on behalf of the Reagan administration. Kirkpatrick noted that in the 1970s "the Soviet Union undertook a military buildup probably unprecedented in the world outside of the time of total war." Kirkpatrick also emphasized Soviet activity in the developing world:

Northern and southern and central Africa, the Middle East and Asia, Central and South America and the Caribbean, have all in the past decade become targets of Soviet-sponsored efforts at destabilization and

261. Vagts & Vagts, supra note 257, at 579.
262. Perkins writes:

Today, with the lessons of the Cold War still fresh, there must be few who believe that the world can rely on law and disregard considerations of the balance of power. . . . A world balance of power is a precarious security, but it is the best there is, and it is the only road to law. . . . Our national interest in the balance of power is in providing the basis for a legal order in which the freedom and independence of nations can be respected.

263. Tucker, supra note 38, at 2. See also Gottlieb, supra note 161, at 48; and Rostow, supra note 166, at 288.
264. Writes Tucker: "[T]he impressive Soviet arms buildup was attended by a persistent and unprecedented effort by Moscow to expand its influence in the developing world." Tucker, supra note 38, at 1.
takeover. The functional scope of Soviet expansion has enlarged alongside its expanding geographical focus: sea lanes, strategic minerals, space, and culture have become operational objects of Soviet ambition. 266

The Reagan administration's concern with Soviet ambitions in Central America figured prominently in forging its foreign policy for that region. 267 The administration's foreign policy towards Central America strongly displayed both self-interest and liberal conviction. Kirkpatrick prudently argued that it would be "bad for the United States for there to be installed one-party, Marxist-Leninist states integrated into the Soviet bloc and willing to have their territory serve as bases for the projection of Soviet military power in the hemisphere." 268 Kirkpatrick also emphasized the Reagan administration's liberal convictions in its Central American policy: "We do not think it is moral to leave small countries and helpless people defenseless against conquest by violent minorities which are armed and trained by remote dictatorships.... We believe our political goal, a more democratic and stable hemisphere, requires building democracies, not the multiplication of dictatorships." 269

One policy chosen by the Reagan administration to incorporate prudential and liberal ends was to support the Nicaraguan Contras. The administration hoped to blunt the threat to the balance of power posed by Soviet and Cuban support for Nicaragua and El Salvador's communist guerrillas by supporting the Contras. The concept was that, first, American support for the Contras would force Nicaragua to end its role in funneling Soviet bloc arms to El Salvador's guerrillas. 270 Second, the Contra policy would force the Sandinistas to democratize the Nicaraguan political system by allowing opposition parties to exist and free and fair elections to take place. 271 If these two steps succeeded,

267. Gottlieb, supra note 161, at 50.
268. Jeane J. Kirkpatrick, Moral Equivalence, in Legitimacy and Force, supra note 6, at 68.
269. Id.
270. As President Reagan said in 1983:

[L]et us be clear as to the American attitude toward the Government of Nicaragua. We do not seek its overthrow. Our interest is to ensure that it does not infect its neighbors through the export of subversion and violence. Our purpose, in conformity with American and international law, is to prevent the flow of arms to El Salvador, Honduras, Guatemala, and Costa Rica.

Rostow, supra note 193, at 454.
271. President Reagan told the New York Times that the Contra policy "would stop when [the Sandinistas] keep their promise and restore democratic rule and have
El Salvador's government could defeat the isolated communist guerrillas with American military and economic assistance; and the United States could continue to prod El Salvador towards strengthening its democratic process without fear of destabilization. If the policy worked, the United States' strategic interests in the region would have been protected and democracy would prevail over Soviet-backed totalitarianism. A successful policy would have produced benefits for American self-interest and for liberal values.

In terms of the liberal realist tradition, the Contra policy required that the United States be able and willing to support the use of force. According to the Reagan administration, Nicaragua's support for the El Salvadoran rebels constituted an illegal use of force that activated El Salvador's right of self-defense, under which the United States could come to the defense of El Salvador. The Reagan administration, then, adhered to the deontological rule of the liberal realist ethic: the United States was able to use force in collective self-defense of El Salvador.

Liberal realism's concern with the balance of power necessitates that liberal states must be willing to use power and force to support the balance of power against threats hostile to self-interest and liberal values. The Reagan administration believed that it was necessary to counter the Soviet threat in order to purge the "intense emotional resistance against the use of U.S. power for any purpose" created by the American experience in Vietnam. Again, the Reagan administration's perspective included prudence and liberal conviction. Kirkpatrick suggested that "[w]hat is called the conservative revival is just this: the return of American confidence in our values, and in our capacities, and of American determination to protect ourselves — from war and defeat." Kirkpatrick also emphasized the broader liberal conviction in the Reagan administration's willingness to use American power:

The restoration of the conviction that American power is necessary for the survival of liberal democracy in the modern world is the most important development in U.S. foreign policy in the past decade. It is the event which marks the end of the Vietnam era, when certainty about the link between American power and the survival of liberal democratic societies was lost.


274. Kirkpatrick, supra note 6, at 398-99.
threats to self-interest and liberal values illustrate well the liberal realist tradition's perspective on the balance of power.

2. Trend Towards a Homogenous Liberal International System

One of the political conditions that the liberal progressive tradition deems necessary for legal progress was the democratization of states and of the international system as a whole. The liberal realist tradition similarly holds that an increasing presence of liberal democratic states in the international system will help moderate the system and reduce the frequency and ferocity of armed conflict. While the balance of power serves as a negative check on international violence, the spread of liberal democracy in the international system provides a positive influence on state behavior. As more liberal states populate the international system, opportunities for prudence and conviction converging in foreign policy greatly increase. Since a liberal state will have to confront the difficult calculus of the utilitarian rule in the liberal realist ethic less frequently, the tension in the ethic eases significantly. Opportunities for legal and moral behavior increase, allowing reciprocity to return to harden the liberal realist ethic on the use of force into international law.

The major controversy in the liberal realist tradition focuses on the means of achieving a more homogenous liberal international society. On one side are liberal realists who doubt that intervention or counterintervention contribute positively to promoting democracy in the international system. On the other side are liberal realists who believe that intervention and counterintervention can promote democracy in the international system. The penultimate part of this essay will explore this controversy by examining the Reagan Doctrine, and will try to come to a conclusion as to whether the liberal realist tradition should welcome or reject pro-democratic intervention and counterintervention.

IV. THE REAGAN DOCTRINE: BEYOND THE LIBERAL REALIST TRADITION?

A. What is the Reagan Doctrine?

Since it was never formally announced as a foreign policy doctrine, the Reagan Doctrine has been subject to many and various interpretations.

275. For evidence that liberal states do not fight one another, see Michael Doyle, Kant, Liberal Legacies, and Foreign Affairs, pts. I & II, 12 Phil. & Pub. Aff. 205, 323 (1983).
Determining the proper characterization of the Reagan Doctrine will be crucial to exploring its relation to the liberal realist tradition.

Perhaps the best way to locate the essence of the Reagan Doctrine is to compare it to another liberal realist doctrine: the Truman Doctrine. The Truman Doctrine embodied the concept of containment: the United States would support governments threatened by insurgency movements supplied and encouraged by totalitarian regimes. Containment flows from the liberal realist ethic: the United States can come to the collective self-defense of a state victimized by a threat or an illegal use of force. President Truman described the doctrine that bears his name in this way: "I believe that it must be the policy of the United States to support free peoples who resist attempted subjugation by armed minorities or by outside pressures." This was the basis for American support for El Salvador in the face of an insurgency supported and supplied by Nicaragua, Cuba, Vietnam, North Korea, and the Soviet Union.

The Truman Doctrine represents a policy of defensive containment: keeping totalitarian forces contained within their current extent. The assumption was that if totalitarianism could be contained, totalitarian states would gradually lose their universalistic fervor for revolution and mellow into status quo states. The Truman Doctrine is identical to Hume's notion that "the pursuit of balance of power policy would increase the probability that oppressive states with universalistic pretensions would over time modify their goals and reform their inner nature."

The Truman Doctrine, however, did not address the prospect that containment may fail. The reactive, defensive spirit of the Truman Doctrine could only recover from a totalitarian success by hoping that containment would work the next time around. The Reagan administration, however, came to power determined to address what it perceived to be the failure of containment. As Kirkpatrick points out, Soviet interventionary activity produced nine new communist dictatorships in the five years prior to Reagan's inauguration: South Vietnam, Cambodia, Laos, Mozambique, Angola, Ethiopia, Grenada, Nicaragua, and Afghanistan. "Soviet development of a global interventionary capability," according to Tucker, "had been seen by many as a serious blow to the promise initially held out by the policy of containment." Reagan had frequently attacked the policy of containment as a candidate for the presidency, and he was

277. On the scope of foreign involvement in El Salvador's rebellion, see generally Moore, supra note 215, and Turner, supra note 218.
279. Lang, supra note 195, at 38.
280. Kirkpatrick & Gerson, supra note 276, at 23.
281. Tucker, supra note 38, at 11.
282. Id.
not alone in believing that "the policy of containment initiated by President Truman has flagged."\textsuperscript{283}

The perceived failure of containment posed a difficulty for liberal realists. Prudence and conviction demanded a response to containment's failings. The Reagan administration's response became known as the Reagan Doctrine.\textsuperscript{284} Simply defined, the Reagan Doctrine stands for the proposition that the United States is politically and morally justified in providing economic and military support to indigenous insurgencies fighting totalitarian governments dependent on the Soviet bloc.\textsuperscript{285} The Reagan Doctrine appeared to have three goals: (1) to redeem containment by bogging down the Soviets in those places where they apparently had triumphed; active anti-communist insurgencies would force the Soviets to pour money and material into their imperial periphery, taking away Soviet incentive to destabilize other regimes;\textsuperscript{286} (2) to shatter the Marxist-Leninist myth of the irreversibility of proletarian revolution by helping anti-communist forces challenge the legitimacy of the totalitarian regimes;\textsuperscript{287} and (3) if possible, to force totalitarian regimes from power by either (a) forcing them to concede to the anti-communist insurgents' demands for democratizing the country's political system; or (b) overthrowing the totalitarian regime.\textsuperscript{288}

\begin{itemize}
  \item \textsuperscript{283} Rostow, \textit{supra} note 166, at 288.
  \item \textsuperscript{284} Kirkpatrick notes that
    
    the Reagan Doctrine . . . developed in response to the Soviets' objective of a global empire and in response to Soviet claims of legitimacy in their imperial venture embodied in the Brezhnev Doctrine and the doctrine of "national liberation wars." More specifically, the Reagan Doctrine was a response to the Soviet Union's efforts to hurriedly establish Marxist-Leninist governments in Third World countries and incorporate these into its "socialist world system."
    
    Kirkpatrick & Gerson, \textit{supra} note 276, at 23.

  \item \textsuperscript{285} \textit{Id.} at 20.

  \item \textsuperscript{286} Turner writes that the Reagan Doctrine "is still essentially defensive in purpose, and, like traditional containment, it is premised on the idea that armed international aggression must be made unprofitable if it is to be deterred." Turner, \textit{supra} note 29, at 129.

  \item \textsuperscript{287} Tucker notes that the Reagan Doctrine has an offensive inspiration in that "[i]ts intent is to show that communist revolutions are indeed reversible, thereby exploding a crucial myth." Tucker, \textit{supra} note 38, at 14. Kirkpatrick also stressed that the Reagan Doctrine "denies the Brezhnev Doctrine's claim that communism is irreversible." Kirkpatrick & Gerson, \textit{supra} note 276, at 21.

  \item \textsuperscript{288} Hoffmann characterized the Reagan Doctrine as a new version of the old roll-back doctrine, which espoused taking back by force territory occupied by the Soviet Union. \textit{See} Stanley Hoffmann, \emph{Ethics and Rules of the Game Between the Superpowers}, in \textit{Right v. Might}, \textit{supra} note 2, at 90.
\end{itemize}
Reagan Doctrine, then, constituted a curious hybrid of containment, ideological attack, and roll-back.\textsuperscript{289}

B. Is the Reagan Doctrine a Liberal Realist Strategy?

An important question was asked by Kirkpatrick: "Is it morally and legally acceptable for the United States to support armed indigenous movements against these [repressive] governments?"\textsuperscript{290} Liberal progressives would argue that the United States cannot legally use indirect force to coerce another state. Under the liberal progressive tradition, the Reagan Doctrine supports illegal intervention and illegal uses of force, which might, depending on the size of the effort, amount to an armed attack.

A liberal realist analysis of the Reagan Doctrine begins with the fact that the government in question came to power through the use of force and intervention by foreign, totalitarian powers. To argue, as the liberal progressives do, that the United States should obey the international legal rules on the use of force and nonintervention despite the wanton violation of both rules by the Soviet bloc again points to the problem of reciprocity. The lack of reciprocity on the use of force and on nonintervention removes from those principles purely legal obligations. The liberal realist ethic, therefore, must face the political scenario the Reagan Doctrine was created to confront.

Since the communist intervention has already succeeded under the Reagan Doctrine scenario, the deontological reasoning for the Reagan Doctrine will have to be different from the deontological rules for self-defense against aggression. The deontological rule might take the following form: a liberal state can intervene in a state where an indigenous insurgency is challenging a repressive government that came to power with the support of foreign totalitarian powers. Tucker sensed just such a rule when he observed that the Reagan Doctrine "declares that intervention may be justified in order to overturn governments that are illegitimate."\textsuperscript{291}

It is important, however, not to define the Reagan Doctrine's deontological rule too narrowly or too broadly. Would the Reagan Doctrine, for example, 


\textsuperscript{290} Jeane J. Kirkpatrick, The Reagan Doctrine II, in \textit{Legitimacy and Force}, supra note 6, at 434.

\textsuperscript{291} Robert Tucker, \textit{Exemplar or Crusader?: Reflections on America's Role}, Nat'l Interest, Fall 1986, at 64, 67. Elsewhere Tucker writes that the Reagan Doctrine "proclaims a new international order in which the legitimacy of governments will no longer rest simply on their effectiveness, but on conformity with the democratic process." Tucker, \textit{supra} note 38, at 13.
justify intervention on behalf of pro-democracy insurgents against a dictatorial government not dependent on foreign support? If the answer to that question is positive, then the Reagan Doctrine's deontological rule would be very broad: a liberal state can intervene in a state where an indigenous insurgency is challenging a repressive government. If the answer is negative, then a crucial circumstance for the Reagan Doctrine is that the repressive government must be dependent on foreign support. Kirkpatrick answers the question negatively when she wrote that "it is legitimate for the U.S. to support an insurgency against a dictatorial government that depends on external support." 292

Another question must be asked at this point: does the insurgency movement have to support self-government as well as self-determination? In other words, do the insurgents have to believe in democracy? The answer to this may seem obvious given the Reagan administration's emphasis on the Contras democratic objectives. But the administration's steadfast support of the Islamic guerrilla fighters in Afghanistan was not premised on the democratic credentials of the mujahdeen but rather on the principle of self-determination for the Afghan people. The Reagan administration's emphasis on the external role of totalitarian states suggests that the Reagan Doctrine embodies a rule of intervention for self-determination rather than self-government. Thus, the Reagan Doctrine might not justify intervention for self-government and might not require that the indigenous insurgency adhere to liberal, democratic principles. 293 This formulation of the Reagan Doctrine is identical to John Stuart Mill's belief that intervention to support self-determination is justified, but not intervention for self-government, because self-determination is the precondition for the development of liberal, democratic politics. 294

But this seems unsatisfactory because, if the Reagan Doctrine is merely a principle of intervention for self-determination, it looks like the mirror image of the Soviet argument that it could support national liberation movements under the principle of self-determination. 295 The Reagan Doctrine clearly has a substantive concept of self-determination that embodies liberal values that cannot be equated with the Brezhnev Doctrine. It is very difficult for a liberal realist to separate intervention for self-determination and for self-government.

A liberal progressive would argue that the Soviets likewise have a substantive concept of self-determination and, thus, that international law must

292. Kirkpatrick, supra note 290, at 437.
293. Kirkpatrick appears to stress the self-determination emphasis of the Reagan Doctrine when she wrote that the Reagan Doctrine "insists on the moral and legal rights of people to defend themselves against incorporation into an empire based on force. It affirms the moral and legal right of the United States to assist those people." Jeane J. Kirkpatrick, The Reagan Doctrine I, in Legitimacy and Force, supra note 6, at 429.
be neutral between the two concepts. The liberal realist ethic, however, rejects any notion of the moral equivalence between democracy and totalitarianism. Instead, liberal realists argue that the neutrality propounded by the liberal progressives has been "altered to the disadvantage of the United States and other democracies."²⁹⁶ Earlier this article noted how closely the neutral principles of the liberal progressive paralleled the Soviet bloc position. Arguments favoring neutral principles and, thus, moral equivalence "impose[] costs disproportionately on liberal, democratic nations" because only liberal nations take the rule of law seriously.²⁹⁷ The liberal realist ethic, therefore, has no qualms about believing in the moral superiority of the liberal conception of self-determination.

The only way to make sense of the self-determination/self-government problem is to identify the two branches of the Reagan Doctrine. The first branch sets out the deontological rule that support for an indigenous insurgency is justified in a case where a repressive state has invaded and occupied another state. This was the situation in Afghanistan and Cambodia.

The second branch is more complicated. The important requirements are: (1) a repressive state; (2) brought to power by and dependent on outside repressive powers; and (3) an indigenous insurgency seeking to end repression and imperial status. In this situation, the insurgency's fight for self-determination must reasonably resemble a fight for self-government. In other words, under the Reagan Doctrine's second branch, the rebels must possess credible democratic credentials. This can be the only meaning of Kirkpatrick's recurrent theme that the "Reagan Doctrine rests on the traditional American doctrine, stated in the Declaration of Independence, that the legitimacy of a government depends on its respect for individual rights and on the consent of the governed."²⁹⁸

The Reagan Doctrine, therefore, contains two deontological rules for two different circumstances. In the case of an invasion of a state by a repressive foreign power, intervention to help an indigenous insurgency movement's quest for self-determination is justified. There seems to be a more relaxed emphasis on the moral worth of the insurgency in this situation than under the liberal realist ethic on direct or indirect aggression. In the case of an indigenous insurgency movement fighting a repressive regime dependent on the support of outside repressive powers, intervention is justified if the rebels seek self-government. In this case, the question of the moral worth of the insurgency seems more important than under the liberal realist ethic on direct or indirect aggression.

The utilitarian reasoning of the liberal realist ethic for the Reagan Doctrine differs from that used in cases of aggression. Since the Reagan Doctrine is

²⁹⁷ Id. For more on the liberal realist critique of moral equivalence, see Jeane J. Kirkpatrick, Moral Equivalence, in Legitimacy and Force, supra note 6, at 61 and Jeane J. Kirkpatrick, The Myth of Moral Equivalence, in Legitimacy and Force, supra note 6, at 74.
²⁹⁸ Kirkpatrick & Gerson, supra note 276, at 22.
"offensive" rather than "defensive," the utilitarian reasoning should require more than minimized destruction. The utilitarian rule should be that intervention for self-determination or self-government should produce more benefits than costs for liberal self-interest and values.

How does the Contra policy stand up to the liberal realist standards for the Reagan Doctrine? With respect to the deontological rule on intervention for self-government, the Reagan administration encountered great difficulties in keeping and broadening support for the Contra effort because it appeared to many that the Contra movement was not indigenous or democratic. The Sandinistas played upon these concerns in their ICJ application when they stated that "[t]he United States has created an 'army' of more than 10,000 mercenaries — many of whom served the former dictator Anastasio Somoza Debayle ...."299 Although the United States did not create the Contra movement,300 the Reagan administration was vulnerable to the attack that the Contra effort really was not indigenous. Verified Contra attacks on civilians and human rights abuses did much to erode the liberal credentials of the Reagan administration's "freedom fighters."301 The democratic objectives of the Contra forces never seemed to emerge clearly enough for the Reagan administration's ethical right of intervention to remain convincing.302 The Reagan administration's difficulties with the democratic credentials and the indigenous origins of the Contra forces illustrate the importance of the deontological step in the liberal realist ethic.303

Assuming that the Reagan administration cleared the deontological hurdle, we must determine whether the benefits of the Contra policy to American self-interest and liberal values outweigh the costs to both. Hoffmann, for example, argues that the costs of the Reagan Doctrine are objectionable:

The costs may be low for the United States, but we in fact would impose extremely heavy costs on the innocent populations that would be the victims of the subversive or insurrectionary movements we supported. Indeed, the costs may be far heavier for those populations than for the regimes we are trying to weaken or to destroy.304

Hoffmann's concern grows out of the realization that civil wars provoke violence on both sides that rips apart liberal values of individual life, liberty, property,

---

301. As Hoffmann put it, "the moral worth of the forces we supported is, to put it mildly, highly uneven." Hoffmann, supra note 288, at 90.
302. See Moore, supra note 215, at 163-70, for the democratic objectives of the Contra forces.
303. Turner senses exactly this when he observed that "the United States has done a rather poor job of explaining the legal basis for its actions in Central America, and this is to be deeply regretted." Turner, supra note 39, at 165.
304. Hoffmann, supra note 288, at 90.
domestic order, and the rule of law. Hoffmann's argument suggests that a strategy premised on fomenting civil war is unlikely to produce benefits in terms of liberal values:

[I]t is not at all clear that the pursuit of the Reagan Doctrine would serve the cause of human rights and justice. As for the other important values — order and peace — it is precisely their importance that has explained, in the past, why the "cold warriors" themselves chose a policy of containment rather than one of roll-back or liberation. The Reagan Doctrine[s] . . . likely effects are neither order . . . nor democracy.

Under this analysis, the Reagan Doctrine's intervention for the self-government branch can never qualify as a liberal realist strategy since it ostensibly seeks to moderate violence in the international system (by containment plus) through the immoderate means of promoting civil wars. This aspect of the Reagan Doctrine instead appears to be solely the product of an ethic of conviction, where the ends justify the means. Certainly much of the Reagan administration's rhetoric about its support for freedom fighters rings of universal conviction. As Kirkpatrick pointed out, the theme of individual freedom and self-government in the Reagan Doctrine "stands in sharp contrast to the conception of foreign policy as a matter between states . . . or as governed by realpolitik.

Could it be that the Reagan administration was too idealistic in formulating the Reagan Doctrine? Is the Reagan Doctrine simply another example of America's attachment to an "historical purpose" and "crusading spirit" to make the world safe for democracy? Tucker argues that "what was striking about the policy of implementing the Reagan Doctrine was the caution and moderation that marked it." Tucker notes that the Truman Doctrine, a supposedly more limited liberal realist strategy, "evolved into the policy of global containment, a

305. The fear of the illiberal horror of civil war goes back to the Founding Fathers. General George Washington worked diligently to create a disciplined, European-style army during the Revolutionary War because of his "fear of the tendency of irregular warfare, with its violations of the international rules of war, to tear apart the entire social contract . . . ." R.F. Weigley, American Strategy from Its Beginnings through the First World War, in Makers of Modern Strategy 408, 412 (Peter Paret ed., 1986).
306. Hoffmann, supra note 288, at 90.
307. "Identification with universal aspirations to freedom," Kirkpatrick said, "is squarely in the American tradition of support for freedom, self-determination, national independence everywhere." Kirkpatrick, supra note 293, at 428. If this interpretation is accurate, then the liberal progressive criticism of the Reagan administration's realism is still off the mark.
308. Id. at 427.
policy that proved neither modest in means nor prudent in calculation."\textsuperscript{310} Kirkpatrick may not, therefore, be wrong to claim that the Reagan Doctrine was more modest and less sweeping than the Truman Doctrine.\textsuperscript{311} In fact, Kirkpatrick stressed that the Reagan Doctrine "seeks to marry idealism and prudence . . . "\textsuperscript{312} Tucker concurs by stating that the Reagan Doctrine "provides an instructive example of [Reagan's] ability to balance two quite different worlds."\textsuperscript{313}

From the perspective of self-interest, the Reagan Doctrine embodied a foreign policy of highly selective uses of limited American military support for indigenous insurgency movements. According to Turner, the Reagan administration supported insurgencies against regimes that either seized power forcefully by relying on Soviet and/or Cuban military support or exported revolution to neighboring states in violation of international law.\textsuperscript{314} The Reagan Doctrine, therefore, never amounted to a general campaign to overthrow unfriendly governments\textsuperscript{315} or a "crusade against communism."\textsuperscript{316} Since its scope was limited, the Reagan Doctrine required relatively small commitments of American resources and no combat forces. The Truman Doctrine, by contrast, led to massive American military expenditures and troop commitments in setting up military alliances and bases around the world to contain the Soviet power. The Reagan Doctrine, in contrast, promised dramatic benefits for American interests at very little cost.

But what about the benefits and costs in relation to liberal values? Hoffmann argued powerfully on the premise that civil wars produce illiberal horrors while containment upheld the values of peace and order.\textsuperscript{317} The first response to Hoffmann is that containment's failings placed the international balance of power, and thus peace and order, in danger. Containment holds up no liberal values if it is ineffective. The very inadequacy of containment inspired the Reagan Doctrine. The second response to Hoffmann is that long term benefits to liberal objectives might yet outweigh the short term costs to liberal values. There is evidence that this assertion may prove to be credible. As Turner notes, "one of the most obvious consequences of the Reagan Doctrine is how effectively it appears to be working."\textsuperscript{318} The Reagan administration's support for the mujahedeen played a prominent role in forcing the Soviets to retreat in humiliation from Afghanistan. Further, American support for UNITA in Angola contributed to an agreement by the Cubans and Soviets to pull Cuban troops out

\textsuperscript{310} Id.
\textsuperscript{311} Kirkpatrick & Gerson, supra note 276, at 21.
\textsuperscript{312} Kirkpatrick, supra note 293, at 431.
\textsuperscript{313} Tucker, supra note 38, at 13.
\textsuperscript{314} Turner, supra note 29, at 126.
\textsuperscript{315} Id.
\textsuperscript{316} Tucker, supra note 38, at 14.
\textsuperscript{317} Hoffmann, supra note 288, at 90.
\textsuperscript{318} Turner, supra note 29, at 127.
of Angola. United States involvement with the democratic Cambodian resistance also helped pressure Vietnam to end its occupation of Cambodia. Only in Nicaragua did the Reagan Doctrine appear to fail; but some controversially give the Contra policy credit for forcing the Sandinistas to hold a free and fair election in late February 1990, which the Sandinistas lost.319

In Afghanistan, Angola, Cambodia, and Nicaragua, the Reagan Doctrine's goals of redeeming containment and shattering the myth of irreversible communist power were achieved. The last goal, achieving self-government, had only been precariously achieved in Nicaragua. The question whether the policy successes enumerated above provide more benefits for liberal values of peace, international order, self-determination, self-government, and individual rights than costs cannot be answered definitively either way since the long term picture is not well developed at the moment. But we can engage in some informed speculation regarding the Contra policy.

In relation to American self-interest, the Contra policy may have promised dramatic benefits at very little cost for the United States; but the policy had diplomatic and political costs for the United States in Central America, Latin American, and Western Europe. But, it does not appear that these costs seriously hurt the United States in the international community. One might argue that whatever benefits for American interests emerged from the Contra policy and other Reagan Doctrine efforts are better explained by other phenomenon, like Gorbachev's "new thinking" in foreign policy.320 Gorbachev undoubtedly had an impact and deserves some of the credit for the communist retreats. The claims for the Reagan Doctrine, however, are not incompatible with Gorbachev's involvement in the process. It is not clear that Gorbachev would have acted to retrench Soviet power if the United States had not been putting pressure on the periphery of the Soviet empire. Utilitarian analysis of self-interest, in the end, does not point clearly one way or the other.

In relation to liberal values, a generous reading of the consequences of the Contra policy might claim as benefits for liberal values the redeeming of containment, the shattering of the myth of irreversible socialist revolution, the reduction of totalitarian influence in Central America, and the introduction of democracy to Nicaragua. The cost of these benefits, however, are measured by the many thousands of Nicaraguans killed, injured, displaced, violated, and oppressed during nearly ten years of civil war.321 How does one determine if the costs to liberal values outweigh the benefits?


321. On these costs, see On Trial: Reagan's War Against Nicaragua (Marlene Dixon ed., 1985).
It is important to note that the benefits and costs represent different types of liberal values. The benefits that relate to the reduction of totalitarian influence in Central America and the international system can be characterized as "third image" values because they relate to the international political system. Kenneth Waltz distinguished three "images" in his analysis of the causes of war. The "first image" cause of war is human nature; the "second image" cause is the state; and the "third image" cause is the international system. I am distinguishing between third image liberal values (relating to the international system), second image liberal values (relating to the type of governments in states), and first image values (relating to individual rights). The achievement of democracy in Nicaragua is both a third and second image liberal value. By contrast, the costs of the civil war are predominantly costs to first image values. The Reagan Doctrine may in the long run, through Nicaraguan democracy and the reduction of communist influence in the international system, contribute benefits to first image liberal values.

The distinction between first, second, and third image liberal values helps locate the liberal emphasis of the Reagan Doctrine. As in the Contra policy, the emphasis was on third and second image liberal values. This should not seem unusual given the liberal realist emphasis on the balance of power and a trend towards a homogenous liberal international system. For this reason, intervention for self-government under the Reagan Doctrine is consistent with the liberal realist tradition.

The harder question is at what point do costs to first image liberal values outweigh second and third image benefits so as to move the Reagan Doctrine beyond the liberal realist tradition. Prudence and conviction converge more easily on third and second image liberal values, meaning that first image liberal values fall more often into that zone of tension between self-interest and liberal values noted above. I argued earlier that the only way liberal realists could avoid this tension was by keeping a balance of power and encouraging the liberalization of the international system. As the Reagan Doctrine shows, the liberal realist ethic faces the awful paradox of having to sacrifice first image liberal values in order to achieve a situation where first image values are less at risk.

The paradox is awful, perhaps tragic, because it forces liberal realists to gamble with the fundamental essence of liberal philosophy, individual rights, on the hope that individual rights will be more secure in the future. The liberal progressive tradition confronts a similar paradox. Liberal progressivism's strict rules and legalisms demonstrate a desire to protect first image liberal values; yet the positions of the liberal progressives place second and third image liberal values in jeopardy in a hostile international system, which then places first image values at risk.

The Reagan Doctrine offered the prospect of reducing the tension in the liberal realist ethic, but it did not escape that tension. Many would argue that the Reagan administration inflicted too much suffering on innocent Nicaraguans for

322. See Kenneth Waltz, Man, the State and War (1959).
the Contra policy to be justified and that there were other, less violent, alternatives to achieve the second and third image values. That may very well be the case, but I do not think that the practice of the Reagan Doctrine in Nicaragua means that the theory of the Reagan Doctrine belongs outside the liberal realist tradition. Given the pattern of consequences of the Contra policy in Nicaragua, however, the Reagan Doctrine is at the very edge of the tradition, straining the tolerance of the liberal realist ethic almost to the breaking point. It is, for that reason, a part of the liberal realist tradition that is to be more feared than revered.

V. CONCLUSION

I began this article with three objectives: (1) to analyze critically the conventional wisdom about the Reagan administration's handling of the international law on the use of force; (2) to examine whether the Reagan administration's policies against Nicaragua fit within the liberal realist tradition; and (3) to explore the difficulties liberal thought has in dealing with the use of force in international politics. In relation to the first two objectives, I concluded that (1) the conventional wisdom about the Reagan administration on the use of force does not demonstrate a sophisticated understanding of either the Reagan administration's liberal realist perspective or the liberal progressive tradition that inspired the critique of the Reagan administration; and (2) (a) the mining of Nicaragua's harbors does not satisfy the demands of the liberal realist ethic on collective self-defense against indirect aggression; and (b) the Contra policy in theory fits within the liberal realist tradition but that its practice may have violated the rules of the liberal realist ethic on intervention for self-government.

My analysis of the various traditions of liberal thought on international law and politics indicate the extent of the difficulty international relations poses for liberal thought. Liberal progressives and realists start with the same belief in the need to deal with international politics in order to assure better prospects for individual rights within states; they also believe in the necessity for a trend towards more democratic states in the international system. The similarities between these two traditions, however, end there. The Reagan years provide excellent examples of how the two traditions diverge and how the traditions react to an international system marked by increased tension, animosity, and conflict. Liberal progressives abandoned the political conditions imbedded in the liberal progressive tradition and retreated deeper into legalism. Liberal realists, in confronting the failure not only of international law but also of containment, formulated policies that put enormous strain on the liberal realist tradition, bending and sometimes breaking its ethic.

I do not believe that the Reagan administration's liberal realist efforts or those of the liberal progressives represent great advances for liberal thought in international politics. Although I have more sympathy for the Reagan administration's position than I do the liberal progressive stance, I cannot pretend that the Reagan administration escaped the disturbing position liberals have been
in since the Enlightenment. The anarchy that is international politics too often forces believers in a political and moral philosophy premised on individual rights, democracy, and peace to choose between self-interest and liberal values and between different types of liberal values. The liberal realists of the Reagan years, like many liberals before them, took their turn as liberalism's Sisyphus, pushing liberal concerns up the anarchical mountain of international relations. The effort was neither in vain nor completely successful.

The collapse of the Soviet empire during late 1989 and early 1990 certainly makes the discussion of the liberal "great debate" during darker international days seem anachronistic. It is hard to imagine at this moment how containment and the Reagan Doctrine will be relevant to future liberal strategies in international politics. The coercion of international anarchy on liberal thought has dramatically decreased with the collapse of communism. Future liberal strategies, however, will be shaped by the traditions of liberal thought refined over the ages. For this reason, an understanding of the liberal progressive and liberal realist traditions during the Reagan years contains important theoretical and practical value. I hope that this article contributes in some small way to such an understanding.

323. I borrow the image of Sisyphus from Hoffmann, supra note 44, at 395.