have diverged more sharply from the mainstream in the last decade, while poverty and unemployment are increasingly concentrated in the black inner city. Even "black ghetto speech has grown progressively more distinct from the standard English" of whites. The result is a vicious circle in which the longer blacks are made victims of the white stereotypes that foster hypersegregation, the more they appear to conform to the stereotypes that were used to justify segregation in the first place, and the deeper victims sink in isolation.

The plight of the hypersegregated cannot be understood, of course, without taking into account the environment in which they are trapped. That includes the disintegrating families and the multiplication of female-headed households, fatherless children, child mothers, and homeless people. They live in streets brutalized by crime amid people crazed by drugs. They live in communities deserted by the strong, the able, and the resourceful members who were liberated by the success of the civil rights movement they once led, and promptly got out. Among these were some individuals with political talents who have become mayors of increasing numbers of our largest cities. This is not to blame them for what happened in the inner cities, but the coincidence of their rise and the increase of hypersegregation does illustrate the paradox of the civil rights movement. The unliberated at the same time find less and less concern for their plight in the higher courts, in the federal administration, and in a country where racial segregation is regaining wide acceptance and resistance to it increasingly seems not worth the trouble, even among its victims.

The terms "class" and "underclass" are constantly used in reference to blacks in the more hopeless ranks. Yet the condition of these people is not adequately defined by the socioeconomic determinants of class, such as unemployment and poverty. Hispanic Americans are often lumped with Afro-Americans, and among the lower ranks they do have many class characteristics in common with blacks. But the study of hypersegregation made extensive comparisons of blacks and Hispanics and found marked differences in the degree and the multiplicity of ways in which blacks were penalized and excluded. "Blacks are thus unique in experiencing multidimensional hypersegregation," Massey and Denton point out. Slow and reluctant to admit the existence of class distinctions in their democracy, Americans are now faced with entrenched realities of caste distinctions.

The analogy between the outcome of the first Reconstruction and the second, between what followed in the 1890s and may follow in the 1990s, remains what it was when it was first made in April 1965, a warning rather than a prediction. But in the intervening quarter century, the warning signals have kept multiplying.

International law? It's purely advisory.

THE CURSE OF LEGALISM

By Charles Krauthammer

"The choice that confronts the diplomat is not between legality and illegality, but between political wisdom and political folly." —Hans Morgenthau

The prohibition against the use of poison gas is not a run-of-the-mill international regulation. It is one of the most hallowed norms of the international system. Yet last year, when Iraq committed the most atrocious crime of the decade, murdering thousands of its own Kurds with poison gas, the world yawned. Oh yes, an international conference was called. It did not punish Iraq. It did not condemn Iraq. It did not mention Iraq. It welcomed Iraq, still stinking of gas, as an honored participant.

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The casualness with which the sacred injunction against chemical war was disregarded shows how fictional is the whole notion of an ordered international system regulated by international law. What can law mean in an international system so conspicuously unable and unwilling to control lawlessness? Americans don't like to face the question. As Hans Morgenthau observed 40 years ago, Americans have a propensity to see the international arena as a court of law, an ordered world regulated by word and contract. The resulting American foreign policy, he noted, was informed less by national interest than by the dictates of a particularly disabling diplomatic disease: legalism.

Legalism starts with a naive belief in the efficacy of law as a regulator of international conduct. But it does not stop there. Legalism means operating abroad by an international rule book, acting on the basis of writ-

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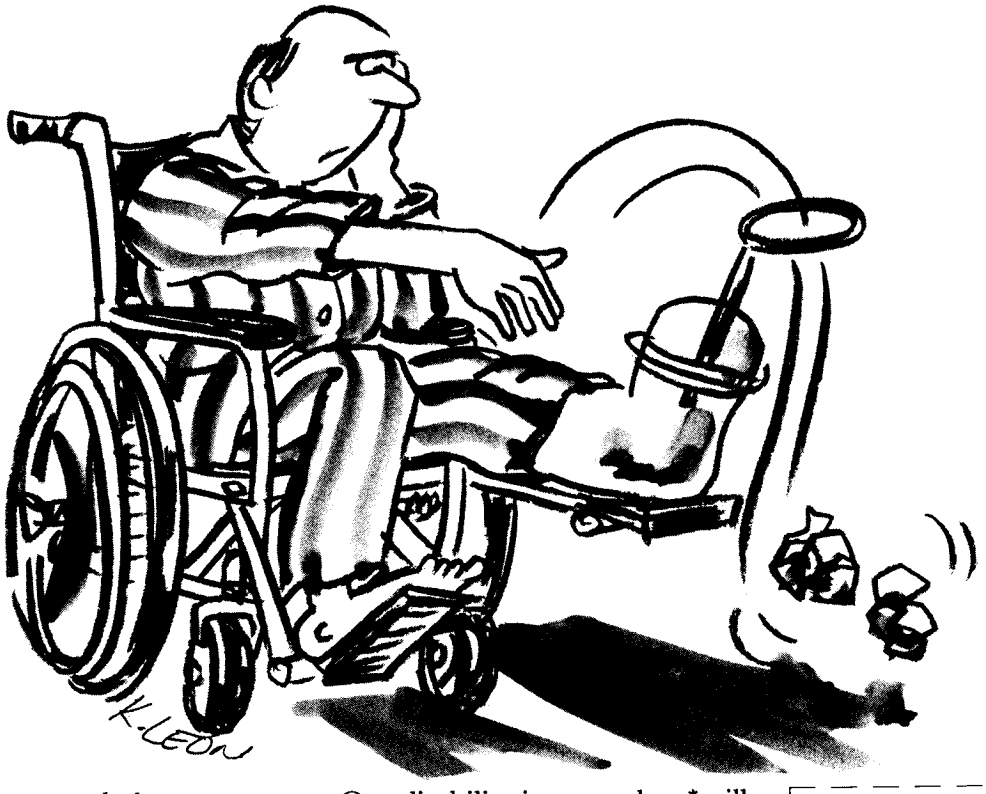

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charges. That step set up a train of political events that elevated Noriega, who by any dispassionate consideration of American national interests is no more than a minor irritant, to No. 1 threat to American interests in the region. Once the legal process had been started, once Noriega had been branded in the national consciousness as an indicted felon, the politicians found it impossible to resist the home-front clamor to pursue justice even across borders. For two years now Panama policy has become little more than a vehicle for law enforcement.

Panama is not an isolated case. In American foreign policy debate, the appeal to notions of legality and illegality have become habitual. During the decade-long debate on Nicaragua policy, one side could hardly pronounce the word "*contra*" without appending "illegal *contra* war," as if in this context the word "illegal" meant something. What was meant, of course, was that the Rio Treaty and the OAS charter prohibited interference in the affairs of neighbor states and therefore U.S. support for the *contras* was prima facie wrong.

In the first place, interfering in the affairs of other states is the whole purpose of foreign policy. In the second place, the particular state with which the United States was interfering, namely Nicaragua, was quite open in proclaiming its right, in fact its internationalist duty, to interfere in its neighboring state of El Salvador to assist the rebels trying to overthrow the government. For years, in fact, the Salvadoran guerrillas made Managua their headquarters. What is the operational meaning and the consequence of Managua's "illegal" interference? None. Scruples about "illegal" interference are a particularly North American phenomenon.

In the third place, illegal according to whom? The OAS? The OAS is not a juridical body. It is a political body, a place where countries go to advance their interests. These are not necessarily U.S. interests. As Irving Kristol once observed, the OAS is "a kind of mini-United Nations where we can be voted down in only three languages, thereby saving translators' fees." The World Court? A frequent and potent liberal refrain in the American debate on Nicaragua was the "illegal mining of Nicaragua's harbors." Indeed, in 1986 Nicaragua "sued" the United States in the grandiloquently named International Court of Justice for mining its harbors. The United States lost the case and was ordered to pay reparations for violating international law, a weighty judgment that had a significant impact on U.S. public opinion.

But the World Court is not a court at all. It is a committee of 15 judges elected by the General Assembly, that center of planetary judiciousness, where the United States and the Seychelles have an equal vote and where the resulting permanent Third World-Soviet bloc majority routinely votes against the United States and finds it responsible for every manner of offense. The World Court blows with the political breezes, most of them noxious to the United States, that come off the East River. It does not follow binding precedent (as does the U. S. Supreme Court, for example). It can change its mind whenever the General Assembly changes its makeup. And it has no way to enforce its rulings.

The World Court thus manages the feat of being at the same time capricious and impotent. Not surprisingly, more than two-thirds of the countries of the world refuse to submit to its jurisdiction. When the Court is used—other than for propaganda—it is for the arbitration of cases so insignificant that it is not worth the time of diplomats to negotiate them. (The United States was recently involved in such a case with Italy. It concerned compensation for a U.S. factory nationalized in 1968.)

Another promiscuous use of the word "illegal" is in association with Namibia. South Africa's occupation of Namibia did deny its people independence. But since the occupation was not particularly barbaric, it is the moral equivalent of, if not more benign than, say, the Soviet occupation of Czechoslovakia or the Chinese occupation of Tibet. Yet the term "illegal" applied uniquely to Namibia. Why? Because the occupation was in defiance of a U.N. Security Council resolution. Why not Tibet and Czechoslovakia? (Czechoslovakia, goes the joke, is the world's most peaceful country: it does not even interfere in its own internal affairs.) Because China and Russia have a veto at the Security Council. No resolution ordering the end of these occupations and condemning them to illegality will ever pass the Security Council.

Yet because the notion of illegality attached to it, the occupation of Namibia acquired a special opprobrium. And that opprobrium had consequences. Many Americans argued that American policy in southern Africa ought to be single-mindedly aimed at ending the occupation of Namibia. "We must press forcefully for Namibia's independence by calling for the end of South Africa's illegal occupation," said the 1988 Democratic platform. No call for any quid pro quo from the other side. The Reagan Administration, on the other hand, demanded a deal: Cuban withdrawal from Angola in return for South African withdrawal from Namibia. When candidate Michael Dukakis was asked whether he would demand the same, he said no. Why not? Because one occupation was illegal and the other was not.

As if that settled the matter. In the end, the Reagan Administration ignored the distinction between "illegal" (South African) and "legal" (Cuban) occupations and produced a deal that will soon end both. As a result, Angola and Namibia and, not incidentally, the United States will be better off, a result that the legalists, if given the chance, would have prevented.

Perhaps the most egregious example of the legal mind at work in American foreign policy was the rhetorical minuet that late last year produced the first U.S.-PLO dialogue. It is not that the United States should refrain from trying to get the PLO, and all the Mideast parties for that matter, to moderate their positions. It is that the United States thought it was getting moderation when in fact it was getting only declarations.

Then-Secretary of State George Shultz established

three rhetorical hurdles for Yasir Arafat to jump over. In Algiers, Stockholm, and his U.N. address in Geneva, Arafat did everything he could to avoid the hurdles. Shultz did not budge. After much exasperation and backroom coaching from the United States, Arafat was finally trotted out to a press conference where he read—once, and in English—words scripted for him in Washington and thus met the American requirements for dialogue.

But did he? The idea behind the 1975 Kissinger criteria was to change PLO behavior. Changing one's language is perhaps an element of changed behavior, but not all of it. At Geneva, Arafat renounced terrorism. So he said. Two weeks later the mayor of Bethlehem proposed a cease-fire in the *intifada*. Arafat then declared: "Whoever thinks of stopping the *intifada* before it achieves its goals, I will give him ten bullets in the chest." Mayor Freij is no collaborationist. He is a moderate. But he can take a hint. He withdrew his proposal.

As for recognition of Israel, Arafat said at Geneva that after the PLO is granted a seat at the international conference, and after a Palestinian state is established with its capital in Jerusalem, he would then be prepared to recognize the right of other nations in the area, including Israel, to live in peace. This is of course a far cry from saying, "I recognize Israel." Who knows what the world will look like at that point in history? The Camp David Accords are only ten years old and are routinely declared dead. Whether Arafat's one-time declaration of possible recognition of Israel in the far future (and after all his demands are met) will mean anything at all in that future is extremely problematic.

Nonetheless, the United States determined, and the world has repeated ever since, that Arafat has "recognized Israel." Fine. It's a stretch, but grant that Arafat did so that once. What has he done since? In Geneva, when asked minutes later whether his tortuous formulation really meant that he recognized Israel, Arafat answered, "Enough is enough." He refused to say. When asked exactly the same question a couple of weeks before in Stockholm, after another supposed recognition of Israel, he had replied, "I recognize peace." At the August 1989 meeting of Fatah, Arafat's own organization produced a "political program"—in Arabic—that so violently denounced the Zionist enemy that the State Department felt obliged to issue a rebuke. Accordingly, after the Fatah delegates had gone home, the Tunis office issued a cleaned-up version in English. They work every time, those magic words. Rather than face the reality of Fatah's true intentions as expressed in its virulent political program, the Administration chose to deal with Fatah's subsequent communiqué, edited for America. On that basis—words that openly belie intentions—the U.S.-PLO dialogue began. On that basis, it continues.

The larger issue is not the opening of the U.S.-PLO dialogue, but what the way that opening came about tells us about the operating assumptions of American foreign policy. Even granting that Arafat's one-time words met American rhetorical requirements, it is absurd for a great power, or any country for that matter, to allow its policy to be dictated by legalistic formulations. To allow the enunciation of certain words automatically to trigger a new American policy is to forfeit all judgment. And judgment is the soul of foreign policy.

Allowing policy to be driven by legal formulas rather than by national purpose is the heart of legalism. This is not, however, to say that treaties are meaningless. Reciprocal agreements—treaties between allies or between countries that mutually agree to abide by agreements and can be trusted to do so—are in the interests of both parties. If the United States and Canada draw up a fishing agreement, they have every reason to be legalistic in carrying it out, since if both countries are scrupulous in carrying it out, both profit. But this situation simply does not obtain when dealing with countries for which law of any kind is a mere instrument, infinitely adaptable to the requirements of power.

Nor does a skepticism toward international law dictate an aggressive foreign policy. A healthy cynicism about the behavior of other countries can endow foreign policy with maturity. It keeps one from being scandalized and recklessly reactive when others fail one's legal tests. For example, the United States discovers that the Soviets have violated the ABM Treaty with their radar station in Krasnoyarsk. Many have argued that this is grounds for abrogation of the treaty: the contract, having been violated by one party, should be declared void. But international relations is not contract law. And treaties are not retained simply because their provisions are fully observed or renounced simply because they are breached. One has to make a larger judgment. Is it in America's interest to retain a treaty that restricts the Soviets, even if not as much as the treaty requires? That is a policy judgment to which a reading of treaty text, no matter how close, contributes nothing.

Turning foreign policy over to the lawyers is the laziest, the most brainless way to make policy. Yet two years ago a great national debate about how and whether to proceed with strategic defenses was turned into a Talmudic contest between Sam Nunn, Esq., and Judge Abraham Sofaer about the proper interpretation of the ABM Treaty and its attendant documents.

What about the future? How are we to think about, say, a chemical warfare plant in a crazy state like Libya? If it became a threat to the United States or other countries, would they be justified in pre-emptively destroying it? International law does not prohibit the possession of chemical weapons. It only prohibits use. There is no legal basis for destroying the plant. Only after it has been used, presumably for mass murder, would we be legally entitled to destroy it.

Now, using military force may be the best way to stop Libya from producing poison gas. The policy decision is difficult. But it is a policy decision, not a legal judgment. In this case, as in many of the tough ones, the law—international law—is an ass. It has nothing to offer. Foreign policy is best made without it. •