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Louis Henkin: Courage and Convictions

Louis Henkin was a man of courage and of convictions. His students at Columbia, who engaged with him inside and outside the classroom during the course of five decades, had many opportunities to learn of his convictions, which were manifest in his teaching, writing and activism. But Henkin would not have spoken in the classroom of his own acts of courage, exemplified by (but not limited to) his combat service in the Second World War, nor would he have drawn attention to other personal virtues. This brief tribute (complementary to others being written by colleagues at Columbia for publication here and elsewhere)³ begins with his wartime years as background for understanding his passionate commitment to the rule of law in international relations.

Henkin entered the army soon after completing his clerkship with Judge Learned Hand of the United States Court of Appeals for the Second Circuit in 1940–41. It is fortunate for many reasons that Henkin had the opportunity to clerk for Hand, not only for what the young Harvard graduate must have learned from “the greatest living Judge of the English speaking world”⁴ but also for what later generations can learn from their correspondence, some of which is preserved in the Hand archive at Harvard Law School.⁵ Hand wrote regularly to his former clerks who served in the armed forces during the war and evidently was concerned about their safety and morale. Henkin replied from the field to one of Hand’s letters in a characteristically candid way:

You ask of reactions to danger—and I wish I could answer in detail. At best it’s really a personal problem, and in our case, to a large extent you’re expected to look after yourself, and you won’t be put in the kitchen for being an ass and neglecting to wear your

3. See Lori Fisler Damrosch, *Louis Henkin (1917–2010)*, 105 AM. J. INT’L L. (forthcoming 2011), for a treatment of Henkin’s influence on the field of international law. See also the tributes by Dean David Schizer, Professor Hans Smit and Professor Sarah Cleveland in the present issue.

4. Letter from Louis Henkin to Learned Hand (Nov. 17, 1944) quoted in GERALD GUNTHER, *LEARNED HAND: THE MAN AND THE JUDGE* 552 (1994).

5. For references and selected quotations, see *id.* at 535–38, 552, 682, 762 n.133. Learned Hand’s granddaughter, Constance Jordan, has graciously provided me with photocopies of some of these letters. I thank the Henkin family for permission to quote them. For additional extracts, see my AJIL tribute (cited in note 3, *supra*).

helmet. So too is the reaction. To speak of the fellow I should know a bit about, well—I never was a hero, I guess, and I'd probably go out of my way to avoid trouble And I confess a dread (not chronic, just one of those fears you talk about) of a Nazi with a bayonet, or capture And yet, with a sort of youthful conceit that cannot *viscerally* be convinced of my vulnerability to the mechanical monsters of these mere men I'd rather not have to meet—I can walk through a mine field when I have to with comparative unconcern, go about my business with bombs falling, even neglect my sect trench, when a lot of hardier braver warriors pale at the first rumble of a plane motor and dive head first at the first alarm of shell fire. So it's a matter of personal difference. But you can feel terribly naked caught without trench or helmet 'neath an attack of strafing planes. You hug the road bank and "sweat it out"—yet since the waiting is of only a few moments, generally, the sensations are neither fear nor prayer nor real concern—something more akin to trying to hold Time and the world absolutely still, playing dead sensitively speaking as though ostrich-like that affords some protection. And if the predicament repeats, especially if you've had some fairly lucky breaks you tend—dangerously—to a visceral confidence which whatever else helps through future ordeals and makes you more efficient—because less worried.⁶

As events unfolded, Henkin would demonstrate more than ordinary heroism in facing down a unit of German troops that vastly outnumbered his own and persuading them to surrender—by speaking to them in his native tongue, Yiddish. For this act of valor, he was awarded the Silver Star.⁷

More than four decades later, Henkin was honored by this *Journal* with the Wolfgang Friedmann Memorial Award, which recognizes outstanding contributions to the field of international law.

6. Letter from Louis Henkin to Learned Hand (March 30, 1943) (on file with author) (responding to Hand's letter of February 21, 1943). Although the location is not specified, this letter appears to have been written during the Allied campaign against the Axis forces in North Africa.

7. William Grimes, *Louis Henkin, Leader in Field of Human Rights Law, Dies at 92*, N.Y. TIMES, Oct. 17, 2010, <http://www.nytimes.com/2010/10/17/us/17henkin.html>.

Friedmann and Henkin, in different ways, put their own lives on the line in confronting Nazi Germany. When they later became colleagues at Columbia, they made common cause in their pedagogy and advocacy of the rule of law in international affairs. After Friedmann's premature and violent death, Henkin joined with other Columbia colleagues to rework Friedmann's classic international law casebook for successive generations of law students.⁸ In accepting the Friedmann award in 1986, Henkin urged a renewed embrace of Friedmann's principles, among them "commitment to law for ourselves as well as for others, a willingness to carry out our obligations, not merely to insist that others carry out theirs."⁹

Henkin wrote eloquently on the relevance of international law to international politics. In a fundamental sense, Henkin's first conviction about international law was that *law matters*. His pathbreaking study, *How Nations Behave*,¹⁰ both elaborates a general approach to the interactive influence of international law and politics and examines how international law functioned in a series of then-recent or ongoing crises and conflicts: Suez-Sinai, the Cuban Missile Crisis and the Vietnam War, among others. Henkin believed in the UN Charter, and he insisted that the Cold War confrontation had not rendered the Charter's principles irrelevant but rather had demonstrated their continuing significance.

His words ring just as true today. His critique of the contention that "anticipatory self-defense" could justify preemptive strikes on Soviet or Soviet-bloc targets is equally applicable to the so-called Bush Doctrine of preemptive defense: "the argument is unfounded, its reasoning is fallacious, its doctrine pernicious."¹¹ His refutation of the claim—"Since our adversaries pay no attention to law, why should we?"¹²—advanced in the context of the U.S.-Soviet struggle, is equally applicable to the conflict with Al Qaeda.

In numerous writings over decades—some of which were published in this *Journal*—Henkin called upon the United States to

8. Compare CASES AND MATERIALS ON INTERNATIONAL LAW (Wolfgang Friedmann, Oliver Lissitzyn & Richard Pugh eds., 1969), with INTERNATIONAL LAW: CASES AND MATERIALS (Louis Henkin, Richard Pugh, Oscar Schachter & Hans Smit eds., 1st ed. 1980; 2nd ed. 1986; 3rd ed. 1993) and INTERNATIONAL LAW: CASES AND MATERIALS (Lori F. Damrosch, Louis Henkin, et al. eds., 4th ed. 2001 & 5th ed. 2009).

9. Louis Henkin, *International Law and National Interest*, 25 COLUM. J. TRANSNAT'L L. 1, 5 (1986).

10. Louis Henkin, *How Nations Behave* (2nd ed. 1979).

11. *Id.* at 141.

12. Henkin, *supra* note 9, at 2 (internal quotation marks omitted).

abide by the principles of the Charter. Thus, for example, in his Friedmann address and many other writings, he deplored “a Reagan version of the Brezhnev doctrine: that it is permissible to use armed force to spread ‘democracy,’”¹³ and accordingly condemned U.S. interventions in Central America, Grenada and elsewhere as contrary to law.¹⁴ He rejected expansive justifications for resort to force in response to terrorist incidents, as with the bombardment of Libya in 1986.¹⁵ He denounced the 1989 military intervention in Panama as “a dangerous precedent” and “a gross violation” of the Charter.¹⁶

On the occasion of Henkin’s eightieth birthday in 1997, this *Journal* published a special double issue consisting of more than twenty essays written by Columbia colleagues, former students and others whom Henkin had inspired, grouped under five headings reflective of main themes of his work: (1) questions of theory, (2) constitutional questions, (3) human rights inquiries, (4) questions of ocean law and (5) use of force.¹⁷ The breadth of the collection signifies Henkin’s reach and influence, and each contribution acknowledges the author’s profound intellectual debt to our colleague and mentor, typically across more than one of the categories used for organizational purposes.¹⁸ In my own case, for example, an essay under the use of force grouping would have to address not only the international law of force, but also constitutional questions, which in turn would need to reach beyond U.S. constitutional law into comparative inquiry, and should also include an interdisciplinary perspec-

13. *Id.* at 3.

14. See Louis Henkin, *The Use of Force: Law and U.S. Policy*, in *RIGHT V. MIGHT: INTERNATIONAL LAW AND THE USE OF FORCE* 37, 47–50, 54–56 (Louis Henkin et al., 2nd ed., 1991).

15. *Id.* at 54.

16. Louis Henkin, *The Invasion of Panama Under International Law: A Gross Violation*, 29 *COLUM. J. TRANSNAT’L L.* 293 (1991). (The table of contents for the issue renders the title of this article as “The Invasion of Panama Under International Law: A Dangerous Precedent.”).

17. *Essays on International Law in Honor of Professor Louis Henkin*, 36 *COLUM. J. TRANSNAT’L L.* 1–492 (1998). The collection was also published in book form. See *POLITICS, VALUES, AND FUNCTIONS: INTERNATIONAL LAW IN THE 21ST CENTURY: ESSAYS IN HONOR OF PROFESSOR LOUIS HENKIN* (Jonathan I. Charney, Donald K. Anton & Mary Ellen O’Connell eds., 1997).

18. Thus, for example, Rosalyn Higgins wrote on human rights under the theory topic; Thomas Buergenthal wrote on constitutional questions under the human rights topic; and Bernard H. Oxman wrote on human rights and the law of the sea under the oceans topic. The examples could be multiplied.

tive.¹⁹ I embarked upon such a multidimensional project—remaining within the twenty-five pages allocated to me by the festschrift’s organizers—not with any confidence that I could predict where the inquiries would lead but rather as a small token to signify the kinds of questions Henkin had motivated me to ask. I am grateful beyond measure that he encouraged me in that quest and in so much more.

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19. See Lori Fisler Damrosch, *Use of Force and Constitutionalism*, 36 COLUM. J. TRANSNAT’L L. 449 (1998).

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