

1972

Commentary

Frank R. Barnett
University of South Carolina

Follow this and additional works at: <https://scholarcommons.sc.edu/sclr>



Part of the [Law Commons](#)

Recommended Citation

Frank R. Barnett, Commentary, 24 S. C. L. Rev. 62 (1971).

This Article is brought to you by the Law Reviews and Journals at Scholar Commons. It has been accepted for inclusion in South Carolina Law Review by an authorized editor of Scholar Commons. For more information, please contact digres@mailbox.sc.edu.

COMMENTARY

Frank R. Barnett*

As a non-lawyer, I'd like to confine my remarks to the relationship of the concept of law to violence and to military strategy. That may seem like a curious mixed bag to you, but I hope to demonstrate it is not entirely irrelevant.

A hundred years ago, a discussion of comparative law and contrasting systems, conducted here in Columbia, South Carolina, would have belonged largely to the realm of the academic. Obviously, in the Nineteenth Century, when America was still sheltered behind her vast ocean moats, Russian and Chinese concepts of law and society would have had virtually no impact upon the lives of our own people. But technology has shrunk both of our oceans to approximately the width of the Rio Grande; and Columbia, South Carolina, is now, in terms of real time, about as close to Moscow as Paris was to Berlin at the beginning of World War I. Therefore, the Brezhnev Doctrine, and Mao's dictum that political power grows out of the barrel of a gun, are scarcely ivory tower abstractions any more.

In the name of "socialist legality," armored divisions do, in fact, cross frontiers. Under the rationale of support for "just" wars, political terrorism and revolutionary techniques are now exported from one continent to another.

We live, in short, in a world in which ideology in the communist states is commingled with western concepts of law; when ideology, on the world stage, stimulates violence; and when low-level violence can, in turn, be supported by high-level military capability.

It seems to me that there are interesting questions, therefore, for interdisciplinary research in the field of international law, relating to the interrelationships of law and ideology, law and foreign propaganda, law and political warfare, law and economic warfare.

*Frank R. Barnett, Rhodes Scholar, LL.D. University of South Carolina; President, National Strategy Information Center, Inc. New York City; Consultant, Standing Committee on Education About Communism, American Bar Association; summer school faculty, The National War College (1959-1967); co-editor, *Peace and War in the Modern Age*, Doubleday Anchor Edition.

The point that has always interested me about Lenin, who had had some familiarity with law himself, is that he introduced into the Twentieth Century the doctrine of non-military warfare as a means of out flanking the rule of law or the status quo. I repeat the term, because it doesn't make sense in English—"non-military warfare." By that, Lenin meant the professional use of techniques of propaganda, agitation, and political warfare to overcome the defenses of status quo societies. And it seems to me that while the cast of characters in Moscow may change, the script writer remains the same. Lenin's principles and Lenin's doctrine seem to be imbedded, even today, in the speeches of major communist leaders and in much of the thinking that appears in Soviet political and military journals.

How might "world law" be affected by the changing military balance? Obviously, as the Soviet Union increases its sheer military capability at home, it has the means to back up the export of revolutionary Leninism or non-military warfare to other parts of the world. Most civilians, certainly of my generation, have been brought up to take for granted that the United States, whatever else it lacks, will always possess those scientific, industrial and military capabilities that would enable this country to defend its own vital interests and/or to come to the support of small allies. We can no longer take that assumption for granted!

When President Kennedy faced down Khrushchev at the time of the Cuban missile crisis, we had roughly a six-to-one advantage in strategic nuclear weapons. That ratio has now changed to a three-to-two balance against us. And, in addition to that, the Soviet Navy is now clearly second in the world. It far surpasses the navy of Great Britain. This means that a Soviet Navy will be able to bring to bear Soviet conventional military power, possibly even in the Caribbean, or in Latin America, which the Soviets refer to as the "strategic rear" of the United States.

The landlocked Bear of Czarist days has learned to swim! The Bear can swim into virtually any ocean and any sea. He can swim under cover of a Soviet nuclear umbrella that can deter our deterrent, which means that Leninist techniques of revolutionary violence, seeded into, let's say, Latin America, can now enjoy direct support from Soviet military capability.

It seems to me this is going to have much to do with the collision of concepts of "law" on the world stage.

I want to leave one question with the audience, which relates to one aspect of Soviet law, mainly the Brezhnev Doctrine, which was used to justify Moscow's occupation of Czechoslovakia. When Soviet armor moved into Prague in August of 1968, even those people in the West who had been busy building bridges of friendship to Moscow were temporarily dismayed by what seemed to be a return to neo-Stalinism. But six months is about as long as the Western democracies can remember communist duplicity; already all of the lessons of Czechoslovakia are being swept under the rug of détente politics.

To me, there were certain lessons from the Soviet invasion that bear on our own security and that are relevant to any discussion of international "law" or contrasting systems.

Lesson number one—When the vital interests of the Soviet Union are at stake, the people in Moscow care absolutely nothing about world opinion. The commissars are sophisticated and clever men. They understand world opinion. They knew, undoubtedly, they would be *temporarily* criticized for invading a small ally. They knew, also, that the accent is on the concept "temporary." World opinion is a fickle and neurotic lover whose attention is quickly diverted elsewhere. Those who feel that Russia can be restrained by appeals to "world law" or world public opinion have the burden of proof on their shoulders, after the invasion of Czechoslovakia.

But there is a further lesson, even more relevant. You recall that, in the fortnight preceding the Soviet invasion of Czechoslovakia, the world was astonished to see virtually the entire Russian Politburo move by special train down to the borders of Czechoslovakia, there to negotiate with Dubcek and his colleagues in the Czech Cabinet. The optimists in the West rejoiced at the sight of a great power behaving "responsibly." Indeed, some people said, "You see, Russia is humbling itself in the search for peace. As a great power, Russia could have summoned the Czechs to Moscow. Instead, the Soviets have moved their own Politburo down to Czechoslovakia, to prove their good intentions." Of course, while the Politburo "negotiated" with Dubcek, the Red Army marshals were putting their finishing touches on the invasion plan. (You don't plan an in-

vasion in the last twenty-four hours; it takes several weeks to work it out.)

I can't predict the future any better than anyone else, but I leave you with a question: Do you believe that Russia, which under the doctrine of Brezhnev was quite prepared to betray a small communist ally with a military stab in the back, would be prepared to treat a capitalist adversary with more courtesy or "legal" consideration if and when Soviet military science should give Moscow an advantage over the United States comparable to that which Moscow had over the Czechs in August, 1968?

I don't know the answer to that question, but it seems to me that we should not leave it entirely and unilaterally to those who formulate the Brezhnev doctrine of "law" to decide.