
‘What We Seek Is the Reign of Law’: The Legalism of the Paris Peace Settlement after the Great War

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Abstract

The Paris Peace Settlement of 1919–1920 has decisively influenced the development of international law in the 20th century. We know far less, however, about the legalism that shaped the process of peacemaking after the Great War. Going beyond conventional narratives of reiterating the achievements and failures of the peacemakers, this article develops an outside perspective on the impact that notions of law, justice and legality had on the Paris negotiations. Allied claims of defending international society and establishing the ‘reign of law’ in international affairs created normative expectations that staked out the ground for the entire settlement. The article exhibits the inherent ambivalence of those declarations and demonstrates how the normative reality construed by the Allies fashioned the political and diplomatic agenda of victorious and vanquished nations alike.

1 Introduction

Defining American war aims in the Great War, US President Woodrow Wilson famously declared in his Mount Vernon address of 4 July 1918: ‘What we seek is the reign of law, based upon the consent of the governed and sustained by the organized opinion of mankind.’¹ Historians have devoted much attention to the second part of this statement, reading it as an early announcement of self-determination and of the League of Nations. What they generally neglect, however, is the first part of Wilson’s declaration. Did his invocation of a ‘reign of law’ reflect a growing awareness for the rule of law in international affairs? And, if so, was this a genuine objective of the Allied and Associated Powers or mere propaganda as the Central Powers suspected?

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¹ *The Papers of Woodrow Wilson (PWW)*, 69 vols (1966–1994), vol. 48, at 517.

How did ideas and principles of international law influence, directly and indirectly, the complicated efforts of peacemaking after the war?

This article takes Wilson's statement as a starting point to reconstruct the ambivalent legalism of the Paris peace settlement of 1919–1920. Legalism in this context means not only the (disproportionate) employment of legal techniques, arguments and institutions but also the ideology of promoting international law as a morally superior, progressive, civilizing project.² Accordingly, my concern is less about doctrines, about scholarly 'dreams born and shattered' in the aftermath of the Great War or about the relationship of international law to the formulation of foreign policy.³ I suggest that to read international law, as has been aptly said, as a 'deep product' of its time, meaning that paying attention to its contexts, its usages and inadvertent effects is essential to understanding its relevance in various historical settings.⁴ My examination, in other words, deals not so much with the legal substance of the Paris peace treaties but, rather, with the question why, how and to what effect notions of international law, legality and justice influenced the settlement. The article approaches legal topics from an outside perspective; this might be a daring attempt, but, to me, there seems no other reasonable way to engage in an interdisciplinary dialogue.⁵

The following considerations are structured in four sections: First, I will establish the argument that the Great War was essentially a war about international law, meaning that legal justifications were given a level of importance not observed in any other conflict before or after. A brief reflection on the procedure and diplomacy of the peace negotiations in Paris will form the second section, complemented in a third section by an outline of some features of the peace treaties, demonstrating how much their leitmotif was a salient legalism and formalism. In the fourth section, I will offer some considerations on the different uses and consequences of this legalistic framework, making a case for why the context of law might matter more than jurists, now and then, are usually willing to concede.

2 The Great War as a War about International Law

It seems to be conventional wisdom that international law hit a nadir in 1914. The outbreak of the Great War ended what is frequently termed as an era of a hundred years of peace in Europe. By the end of the 19th century, according to this traditional account, the Great Powers of Europe were stumbling from crisis to crisis in an anarchic state system, unwilling and unable to adhere to the rule of international law any longer or to trust its mechanisms for peaceful conflict resolution. The Balkan

² For a similar definition of legalism, see B.A. Coates, *Legalist Empire: International Law and American Foreign Relations in the Early Twentieth Century* (2016), at 3.

³ S.C. Neff, *Justice among Nations: A History of International Law* (2014), at 345.

⁴ Cogan, 'The Oxford Handbook of the History of International Law', 108 *American Journal of International Law* (2014) 371, at 375.

⁵ Cf. M.M. Payk, *The History of International Law – or International Law in History?*, available at www.ejiltalk.org/author/mpayk/. The present article draws from my habilitation treatise. M.M. Payk, *Frieden durch Recht? Der Aufstieg des modernen Völkerrechts und der Friedensschluss nach dem Ersten Weltkrieg* (2018).

entanglements and the assassination of Archduke Franz Ferdinand in Sarajevo on 28 June 1914 were, in this perspective, only a catalyst for an all-out war that seemed inevitable to many. The long simmering imperial rivalry in the heart of Europe boiled over, and it swept away any expectations of international law, and, indeed, any respect for it, in the most gruesome war mankind had so far experienced.⁶

This established account deserves careful consideration. Most recent scholarship on the Great War hints at a very nuanced and complex picture of its origins, refraining from older assumptions that it was unavoidable.⁷ In a similar vein, David Kennedy has already pointed out in a seminal article more than two decades ago that the alleged lack of respect for international law in the late 19th century was as much a product of post-war reflection as of pre-war ignorance.⁸ It is indeed difficult to argue that international law was in an inevitable decline. Even though its impact on state conduct and the formulation of foreign policy remains debatable, a rising confidence in an international order based on the rule of law can be observed in the societies of Western Europe and North America from the mid-19th century. The liberal faith in legal rules to contain and solve conflicts in any kind of community was not limited to the national arena but projected onto international affairs as well, contributing to an already robust growth of internationalism. General trends towards a juridification and normative restructuring of international relations are also discernible. The last third of the 19th century witnessed a stunning increase in multilateral treaties and conventions, international conferences, societies and organizations, both governmental and non-governmental. New regulatory regimes came into being, as did a growing peace movement or popular support for the idea of arbitration. The Hague Conferences of 1899 and 1907 bear testimony to these trends. The discipline of international law itself flourished; from the 1860s onward, first chairs and academic journals were established as were scholarly associations such as the Institut de Droit International. Likewise, legal advisors were installed in most ministries of foreign affairs during the course of the 1870s and 1880s, reflecting the growing need to pay tribute to international law on an official level. Constraints of space do not allow going into too much detail here; it suffices to say that these trends reflect both a popular experience and a progressive expectation that international law should be the prime medium for any regulation and governance of world affairs.⁹

⁶ Cf. W.G. Grewe, *The Epochs of International Law* (2000), at 442. In a similar vein, see Conze, "'Wer von Europa spricht, hat unrecht.': Aufstieg und Verfall des vertragsrechtlichen Multilateralismus im europäischen Staatensystem des 19. Jahrhunderts', 121 *Historisches Jahrbuch* (2001) 214.

⁷ Cf. J. Leonhard, *Die Büchse der Pandora: Geschichte des Ersten Weltkrieges* (2014); C. Clark, *The Sleepwalkers: How Europe Went to War in 1914* (2012).

⁸ Cf. Kennedy, 'International Law and the Nineteenth Century: History of an Illusion', 65 *Nordic Journal of International Law* (1996) 385.

⁹ Cf. Vec, 'From the Congress of Vienna to the Paris Peace Treaties of 1919', in B. Fassbender and A. Peters (eds), *The Oxford Handbook of the History of International Law* (2012) 654; M. Mazower, *Governing the World: The History of an Idea* (2012), at 65–93. A classic by now, see M. Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960* (2002); see also Neff, *supra* note 3, at 298–339 or the contributions to M.M. Abbenhuis, C.E. Barber and Annalise R. Higgins (eds), *War, Peace and International Order? The Legacies of the Hague Conferences of 1899 and 1907* (2017); T. Hippler and M. Vec (eds), *Paradoxes of Peace in Nineteenth Century Europe* (2015); L. Nuzzo and M. Vec (eds), *Constructing International Law: The Birth of a Discipline* (2012).

This belief in international law did not suddenly dissolve after July 1914. It would be too narrow a perspective to consider the outbreak of the Great War as a general breakdown of international law, an abrupt forsaking of all of the plans and hopes of the pre-war years. True, it seriously challenged assumptions about inevitable progress, and there were strong expressions of disappointment and frustration. But a closer look reveals that legal concepts and expectations were of supreme, and transformative, importance to the war. Isabel Hull has reconstructed the influence of international law on the conduct of the war in Britain, France and Germany in meticulous detail, looking at the belligerents' views on military necessity and neutrality, on occupation and the treatment of prisoners of war, on blockade and submarine warfare.¹⁰ One could even go one step further and argue that the impact of international law proved to go well beyond the actual course of warfare or the ponderings of legal scholarship. The most prominent example would be the German invasion of Belgium in violation of the London Treaty of 1839 guaranteeing Belgian neutrality.¹¹ This was no doubt an aggressive breach of a major European treaty by one of its signatories. However, the crucial part of the story is the context given to this infringement in Western societies, far beyond the community of international lawyers. There was a broad consensus in the Allied nations that when Germany ignored this treaty, this had a significant political and cultural meaning. Shocking stories, some imagined, some true, of German atrocities committed during the occupation of Belgium soon started circulating, giving rise to a broad understanding that the 'rape'¹² of an innocent country was an act of lawlessness and barbarism.¹³ The legal breaches were seen to reveal the true nature of Prussian militarism, its contempt for international law and its disdain for Western civilization. In that sense, Chancellor Theobald von Bethmann-Hollweg's famous description of the treaty of guarantee as a 'scrap of paper' seemed symptomatic.¹⁴ Especially in Britain, this comment fuelled a popular outcry invoking the sanctity of treaties, the honour of a given pledge and the binding force of law governing the relations between civilized nations.¹⁵

Had this happened 50 years earlier (or later), the violation of an international treaty would most certainly have been cast in different terms and pictures. In the months following August 1914, a key argument on the Allied side was to describe the war as a struggle not between rival nations but, rather, between two antagonistic conceptions of world order. In this perception, the war was rendered as a conflict between ruthless,

¹⁰ I. Hull, *A Scrap of Paper: Breaking and Making International Law during the Great War* (2014). Broad overviews include Deperchin, 'The Laws of War', in J.M. Winter (ed.), *The Cambridge History of the First World War*, 3 vols (2014), vol. 1, at 615; Shinohara, 'International Law and World War I', 38 *Diplomatic History* (DH) (2014) 880.

¹¹ Treaty between Great Britain, Austria, France, Prussia, and Russia, on the one part, and Belgium on the other, relative to the Netherlands and Belgium 1839, reprinted in *British and Foreign State Papers*, vol. 27, part 2, 1000–1002.

¹² Gullace, 'Sexual Violence and Family Honor: British Propaganda and International Law during the First World War', 102 *American Historical Review* (AHR) (1997) 714, at 718.

¹³ J. Horne and A. Kramer, *German Atrocities, 1914: A History of Denial* (2001).

¹⁴ Hull, *supra* note 10, at 41–43; Otte, 'A "German Paperchase": The "Scrap of Paper" Controversy and the Problem of Myth and Memory in International History', 18 *Diplomacy and Statecraft* (2007) 53.

¹⁵ As an example, see 'The German View of Treaties', *The Times* (19 August 1914), at 8.

power-hungry nations, on the one hand, and law-abiding, trustworthy states with a strong sense of sovereign equality, on the other hand. Defending international law became, at least in Western Europe, a central argument when rationalizing the efforts of the Allied nations in order to create a united front towards Germany and Austria-Hungary. Success proved the power of this suggestive understanding. The Central Powers were able to enlist only Bulgaria and the Ottoman Empire – already a dubious nation in Western eyes – onto their side.¹⁶ In contrast, the British, French, Belgian and Serbian claim that they were waging a righteous and 'just war' motivated many more states to join their ranks. The breakthrough in casting the Triple Entente as an internationalist confraternity was arguably reached in 1917, when Tsarist Russia dropped out and the USA decided to intervene with the prime objective of restraining – as Wilson put it in his war message to Congress – the 'lawless and malignant few'¹⁷ disturbing world peace.¹⁸ In the end, more than 40 Allied and Associated Powers fought against the four Central Powers.

There should be no room for misunderstanding here. This notion of an international society standing up to defend the rule of law was neither the result of some jurists' deliberations nor did it come out of the inevitable logic of the legal breaches or the dynamics of war itself. One cannot seriously claim that describing the conflict in terms of 'right' versus 'might' – of law-abiding versus law-breaking nations – was by any measure an adequate reflection of reality. But it was not meaningless either. To shrug it off as mere wartime propaganda would underestimate the dynamics of those perceptions and their power to create a reality of their own. Even if the argument of defending international law may have seemed ambiguous and doubtful to many, if not to most of the players involved, it derived its irresistible power and credibility from values and norms prevalent in Allied societies. And, moreover, this perception of a *Guerre du droit* carried enormous consequences for the peace settlement.

3 A World Treaty for World Peace

Following the weeks after the armistice of 11 November 1918, delegates from all Allied and Associated Powers started to assemble in Paris for an inter-Allied discussion on the conditions for the peace.¹⁹ Early French drafts had envisaged that there would be two series of negotiations, one for imposing peace terms upon the defeated nations and the other for deciding on new '*stipulations de Droit public s'appliquant à tous les Etats*

¹⁶ On the status of the Ottoman Empire in 19th-century European international law, cf. D. Rodogno, *Against Massacre: Humanitarian Interventions in the Ottoman Empire, 1815–1914* (2012).

¹⁷ Wilson, 'War Message to Congress', in PWW, *supra* note 1, vol. 41, at 526.

¹⁸ For the legal dimension of American intervention, cf. Coates, *supra* note 2, at 136–151.

¹⁹ For an introduction to the conference, see A. Sharp, *The Versailles Settlement: Peacemaking after the First World War, 1919–1923* (2nd edn, 2008); M. MacMillan, *Peacemakers: The Paris Conference of 1919 and Its Attempt to End War* (2001) or the more recent overview of Konrad, 'Drafting the Peace', in J.M. Winter (ed.), *The Cambridge History of the First World War*, 3 vols (2014), vol. 2, at 606. The best organizational overview is still E.S. Marston, *The Peace Conference of 1919: Organization and Procedure* (1944).

et appuyés sur des garanties et sanctions positives'.²⁰ The basic idea behind this plan of separate rounds of deliberations was simple. As the war had been fought – and won – on the grounds of respect for international law, the conclusion of peace needed to be more than a termination of hostilities followed by a return to the *status quo ante bellum*. Expectations were running high for a comprehensive 'peace of justice' or a '*paix du droit*'. There was a broad understanding that the end of the war would not only result in the reinstatement of international law and the sanctity of treaties but also establish a new, more stable and durable legal order among the nations of the world.

In a note written by David Hunter Miller, legal advisor to the American delegation, this confidence in the foundation of a new international order was clearly spelled out, as was the notion that the main decisions would be reserved for the principal Allied and Associated Powers. While sceptical about the French November proposal in general, he agreed with the position of the Quai d'Orsay that the 'public law of the future' ought to be dealt with in 'a preliminary discussion among the four Great Powers and Japan ... for it is essential that these Powers should be in accord in any plan looking toward the peace of the world in the future'.²¹ Miller's words reflect the profound agreement on the side of the Allies that the essential topics of the settlement could not be the subject of a compromise, negotiated in open discussion and diplomatic bargaining with the Central Powers. Instead, the new foundations of international order seemed to be inextricably connected to the imposition of strict peace conditions upon the defeated nations. In the public's perception, but no less in the corridors of power in Paris, London or Washington, there was an understanding that by virtue of their victory, the Allied nations not only had a right but, indeed, also a moral duty to enforce peace terms that would vindicate the rule of international law. The distinction between ending the war and establishing a new international regime was thus blurred from the beginning. As wartime interpretations had suggested, the future world order would require a post-war settlement effectively restraining outcast nations. Against this backdrop, it seemed logical, and fully justified, to contain Germany's alarming claim to power in Europe by imposing disarmament provisions, economic constraints and territorial concessions. The Ottoman Empire, by contrast, would have to be completely dismembered and, for the benefit of mankind, reduced to a Turkish rump state under international oversight.²²

²⁰ Examen des conditions de paix of 15 November 1918, reprinted in R. Frank and G. Krumeich (eds), *Documents diplomatiques français: Armistices et Paix 1918–1920* (2014), vol. 1, at 265 (translation: 'stipulations of public law applying to all states and founded on positive guarantees and sanctions'). Cf. P. Jackson, *Beyond the Balance of Power: France and the Politics of National Security in the Era of the First World War* (2013), at 224–233.

²¹ 'Memorandum by Mr. D.H. Miller on Revised French Proposals of 22 November 1918', reprinted in *Papers Relating to the Foreign Relations of the United States: The Paris Peace Conference, 1919 (FRUS)*, 13 vols (1942), vol. 1, at 358.

²² On the treatment of the Ottomans and the rationale of the (stillborn) Treaty of Sèvres, cf. R. Banken, *Die Verträge von Sèvres 1920 und Lausanne 1923: Eine völkerrechtliche Untersuchung zur Beendigung des Ersten Weltkrieges und zur Auflösung der sogenannten 'Orientalischen Frage' durch die Friedensverträge zwischen den alliierten Mächten und der Türkei* (2014); P.C. Helmreich, *From Paris to Sèvres: The Partition of the Ottoman Empire at the Peace Conference of 1919–1920* (1974); see also Tusan, "'Crimes against Humanity": Human Rights, the British Empire, and the Origins of the Response to the Armenian Genocide', 119 *AHR* (2014) 47.

It should not come as a surprise, then, that the inter-Allied deliberations could never have led to a general peace congress in which the vanquished would have enjoyed an equal standing with the victors.²³ On the other hand, far-reaching plans in which a unified 'world treaty' would be prepared by the principal Allied and Associated Powers and signed by all belligerents and neutrals also remained illusory.²⁴ Negotiations in Paris were intricate and time-consuming. More often than not, diplomatic quarrels and bitter national rivalries gained the upper hand. Moreover, most societies were war-weary. There was growing dissent and unrest in Britain and France, with strong demands to end wartime restrictions and burdens. For all of these reasons, it seemed imperative in early April to hasten the German peace conditions.²⁵ Instead of preparing a world treaty of enormous proportions with a multitude of international law provisions, as had originally been considered, a single treaty containing the peace conditions for Germany was drafted and was delivered to a hastily summoned German delegation at the Trianon Palace Hotel in Versailles on 7 May 1919. This draft still bore all the marks of a world treaty, however, and served as a template for the other four peace treaties, even though it took more than a year to end negotiations about, and with, Austria and Hungary, Bulgaria and the Ottoman Empire.

While this way of concluding peace by imposing particular conditions upon the defeated nations seemed a matter of course to the Allies, it was understood by the Germans as an affront of unparalleled proportions. It is well known that the decision to exclude Germany from open negotiations poisoned relations for many years to come. The juridical approach taken by the Allies, in which the military victory was equated with a triumph of international law, was deeply resented. Seen from Berlin, both the Allied proposition of German war guilt and the question of an actual military defeat of the Reichswehr were far from self-evident.²⁶ Many Germans, from highly ranked officials to everyday citizens, from unrepentant monarchists to representatives of the new Weimar democracy, believed that the Reich would negotiate from a position of strength or was at least entitled to a peace according to Wilson's Fourteen Points, albeit in the German definition. While it is hard to see how the Allies could have complied with those demands, their approach to defining peace – solely in legal and contractual terms – did little to ease the tensions. In the end, the way in which they ignored the political integration and inclusion of their former enemies turned out to be the most problematic issue of the entire peace settlement. British diplomat James Headlam-Morley sensed the flaws of such a formalistic approach only minutes after the signature of the Treaty of Versailles on 28 June 1919, at the very moment

²³ That this was a break with older European traditions has often been noted. See Laniol, 'Faire la paix sans l'ennemi? L'exemple de la Conférence de la Paix de 1919', *Bulletin de l'Institut Pierre Renouvin* (2015), at 89; Lesaffer, 'Peace Treaties and the Formation of International Law', in B. Fassbender and A. Peters (eds), *The Oxford Handbook of the History of International Law* (2012) 71, at 91.

²⁴ For an American partial draft of such a general treaty, see Miller and Scott, 'Draft Treaty of 9 January 1919', reprinted in *FRUS*, *supra* note 21, vol. 1, at 316–324.

²⁵ Cf. MacMillan, *supra* note 19, at 205–214.

²⁶ Cf. B. Barth, *Dolchstoßlegenden und politische Desintegration: Das Trauma der deutschen Niederlage im Ersten Weltkrieg 1914–1933* (2003); U. Heinemann, *Die verdrängte Niederlage: Politische Öffentlichkeit und Kriegsschuldfrage in der Weimarer Republik* (1983).

when the German delegates were ushered out of the Hall of Mirrors without the other delegates giving them due respect or even paying them further attention: '[T]here was no suggestion that, the peace having been signed, any change of attitude was to be begun. Looking back, the whole impression seems to me, from a political point of view, to be disastrous.'²⁷

4 The Legalism of the Treaties

Arguably, the key term in Headlam-Morley's bitter comment is the word 'political'. As the peace conditions were formulated in a vocabulary of international law and justice, the Allied powers tended to avoid any clear political overtures. Expressions of unmasked hostility were as rare as gestures of goodwill. The entire procedure of concluding the peace seemed to boil down to legal rules, enacted by the formal act of signature and executed in an almost mechanical, self-enforcing process. That does not mean that political intentions and ambitions were in short supply, of course. But the legitimacy of the peace settlement was firmly placed on a remarkably coherent basis of formalism and legalism. All treaty provisions, whatever their ulterior motive might be, had to conform to the overarching leitmotif of a restoration and consolidation of international law.

The Covenant of the League of Nations can serve as a good case in point.²⁸ The reasons for incorporating this unique 'treaty within a treaty' into the Versailles Peace Treaty and the subsequent peace treaties have been much debated and often criticized.²⁹ The inclusion makes sense, however, if one discounts the usual portrayal of the Covenant as a revolutionary innovation in international relations, marking a shift from 'absolute' to 'relative' sovereignty'. Instead, the integration of the League of Nations into the peace settlement hints at the transformation of the old Concert of Europe, with the status of the Great Powers no longer depending on their political and military might alone but defined by their (assumed) respect for, and defence of, international law. The denial of immediate membership to Germany underscores this idea of the League as the community of the law-abiding and civilized states, as does, for instance, the claim to be a guardian for the less developed nations of the world by means of the 'mandate system'.³⁰ This notion was also clearly spelled out in the preamble, which set out in brief terms the Allied meaning of war and peace. The purpose of the Covenant, it read, was to 'promote international co-operation' and peace 'by the prescription of open, just and honorable relations between nations, by the firm establishment of the understandings of international law as the actual rule of conduct

²⁷ J. Headlam-Morley, *A Memoir of the Paris Peace Conference, 1919* (1972), at 178ff. For an account of the Versailles ceremonials, see V. Steller, *Diplomatie von Angesicht zu Angesicht: Diplomatische Handlungsformen in den deutsch-französischen Beziehungen 1870–1919* (2011), at 450–463.

²⁸ Covenant of the League of Nations 1919, 13 AJIL Supp. 128 (1919).

²⁹ D.H. Miller, *The Drafting of the Covenant*, 2 vols (1928), vol. 1, at 398. Versailles Peace Treaty 1919, 225 Parry 188.

³⁰ S. Pedersen, *The Guardians: The League of Nations and the Crisis of Empire* (2015).

among governments, and by the maintenance of justice and a scrupulous respect for all treaty obligations'.³¹

There is nothing in these sentences indicating the establishment of some supra-national organization. It might be fair to say that they outline the essence of Western belief in a world of contractual internationalism, of cooperation and commerce between nations under the rule of law. The words of the preamble indicate, on the one hand, a clear counterpoint to the law-breaking behaviour of the Central Powers, in particular, the German violation of Belgian neutrality. On the other hand, the Covenant was deeply imbued with late 19th-century internationalist thought. The League would not interfere with the sovereign interests of loyal, law-abiding, civilized states, in terms of a Western definition, but promised to organize their peaceful co-existence and cooperation through a network of treaties, procedures and institutions. 'The "anarchistic" society of nations is doomed and is to be superseded by an "organised" society of nations', wrote the Belgian jurist Georges Kaeckenbeek in 1918, and this was also the prevailing mindset of the Paris peacemakers.³²

This internationalist legalism can also be found in other parts of the peace conditions. The disarmament of Germany, which was of obvious importance to the security concerns of the French, was not to be executed by brute force but, rather, by multilateral control commissions and in terms that were consistent with the idea of a general disarmament set out in the Covenant of the League of Nations.³³ Another good illustration is the topic of reparations, which was to be understood as part of the larger question of responsibility for the war and its conduct. In contrast with former conflicts, it was no longer possible to demand indemnities as spoils of war for the victor. Instead of directing the defeated nations to pay a lump sum, the Allies felt the need to lay out a comprehensible, rational scheme to assess the liabilities, to calculate what payments needed to be made for the various kinds of damages done and to estimate what the Central Powers could actually pay. Building on the assumption that Germany and her allies bore sole responsibility for war and destruction, the peacemakers assembled dozens of detailed provisions for compensation. Article 231 of the Versailles Peace Treaty, the so-called war-guilt clause, would haunt the Weimar Republic in the years to come and should probably be seen as the single most disputed and emotionally charged of all the treaty provisions.³⁴ Yet it was never meant to be a moral condemnation. Instead, it was part and parcel of an attempt to establish legal

³¹ Cf. P. You, *Le Préambule des traités internationaux* (1941), at 90–104; Miller, *supra* note 29, vol. 1, at 217–229.

³² Kaeckenbeek, 'Divergences between British and Other Views on International Law', 4 *Transactions of the Grotius Society* (1918) 213, at 215. For more context, cf. G. Sluga, *Internationalism in the Age of Nationalism* (2013); C. Sylvest, *British Liberal Internationalism, 1880–1930: Making Progress?* (2009).

³³ Cf. Webster, 'Making Disarmament Work: The Implementation of the International Disarmament Provisions in the League of Nations Covenant, 1919–1925', in C. Fischer and A. Sharp (eds), *After the Versailles Treaty: Enforcement, Compliance, Contested Identities* (2008) 133.

³⁴ Cf. Laniol, 'L'article 231 du traité de Versailles, les faits et les représentations: Retours sur un mythe', 158 *Relations internationales* (2014) 9; Sharp, *supra* note 19, at 90ff, 135–137; P. Krüger, *Deutschland und die Reparationen 1918/19: Die Genesis des Reparationsproblems in Deutschland zwischen Waffenstillstand und Versailler Friedensschluß* (1973), at 50ff.

forms of state responsibility. There may have been bitter bargaining behind the scenes on the whole issue of reparations, but the crucial point is that on stage all demands and interests could only be expressed through a language of legality, by referring to precedents in international law and by invoking justice as the main objective of the Allied nations. It is no exaggeration to say that the decisions of 1919 placed, as James Crawford has put it, ‘issues of responsibility for ... war and peace irrevocably within the domain of the “legal”’.³⁵

The same holds true for the provisions regarding the prosecution of war criminals and the arraignments of German military leaders, up to and including the Kaiser. The Allied decision to hold those responsible for war crimes accountable went hand in hand with the intention to establish a minimum standard of justice. It was British premier David Lloyd George who, in a meeting of the Imperial War Cabinet shortly after the armistice, spoke of an obligation to set up a tribunal to try Kaiser Wilhelm II, even if this went beyond any legal precedent: ‘With regard to the question of international law, well, we are making international law, and all we can claim is that international law should be based on justice. ... There is a sense of justice in the world which will not be satisfied so long as this man is at large.’³⁶

Again, it is easy to dismiss such a statement for its obvious political intent. Lloyd George was on the campaign trail at the time, and the subject of punishing Germany was central to his political message. Without doubt, he would have had second thoughts had he realized how those claims would add up to a concept of universal jurisdiction and eventually lead to a general abolition of immunity for state officials and heads of states. Nevertheless, by picking up popular demands, the Paris peace settlement was a crucial step in the process of establishing individual responsibility as a maxim of international law and international criminal law, leading up to the Nuremberg trials and, more recently, to the jurisprudence of the International Criminal Tribunal for the former Yugoslavia and the International Criminal Court.³⁷

Finally, the debate on the question of national self-determination needs to be mentioned as another example of the legalistic framework of the Paris peace settlement. Self-determination was an essential phrase in the realm of Enlightenment ideas that, in the course of the 19th century, had been appropriated by nationalist currents and transformed into a more collective understanding.³⁸ During the Great War, the expression was first adopted by Vladimir Lenin as a means of destabilizing imperial rule in Eastern Europe. Woodrow Wilson picked up the phrase, but not before 1918, and he remained reluctant to speak of self-determination in more than general terms. On closer scrutiny, it soon became apparent that the American president thought of

³⁵ J. Crawford, *State Responsibility* (2013), at 27ff.

³⁶ D. Lloyd George, *The Truth about the Peace Treaties: Memoirs of the Peace Conference*, 2 vols (1938), vol. 1, at 100.

³⁷ M. Lewis, *The Birth of the New Justice: The Internationalization of Crime and Punishment, 1919–1950* (2014); K.C. Priemel, *The Betrayal: The Nuremberg Trials and German Divergence* (2016); A. Weinke, *Gewalt, Geschichte, Gerechtigkeit: Transnationale Debatten über deutsche Staatsverbrechen im 20. Jahrhundert* (2016).

³⁸ Weitz, ‘Self-Determination: How a German Enlightenment Idea Became the Slogan of National Liberation and a Human Right’, 120 *AHR* (2015) 462.

self-determination not as a peculiar right of peoples or polities to have their own state, or to have a voice in intricate issues such as drawing borders, but, rather, as a principle of participation and democratic self-government.³⁹ However, this did not prevent a worldwide audience from projecting the highest hopes and greatest expectations onto the US president and his Fourteen Points.⁴⁰

Against the backdrop of this 'Wilsonian moment' with its lofty anticipations and nebulous promises, the peace treaties would ultimately be a disappointment. Most diplomats and delegates understood early on that self-determination was a vague and volatile pledge at best and that it would play a marginal role in territorial settlements. In fact, some decisions conflicted outright with this principle even in its broadest and most elusive definition. That the Allied Powers should hand South Tirol over to Italy⁴¹ or Shandong to Japan⁴² raised bitterness and outrage even among their own experts, and the debate on the fate of Fiume almost led to a collapse of the entire conference when the Italian delegation temporarily moved out in May 1919.⁴³ Yet all these hotly debated cases indicate how much ideas of self-government had already become a powerful influence in international affairs.⁴⁴ It was a virtually impossible task for the peacemakers to politically suppress what was increasingly perceived to be a legal right.

The importance of the Paris peace settlement, thus, is not that it promoted self-determination per se but, rather, that it enabled its normative construction; it acknowledged what was desirable and which norms should prevail, no matter how inadequately they were implemented. By claiming to put an end to an old-style haggling over populations and territories for political, economic and strategic reasons, the Allies could not help but nurture expectations and demands soon to be recast as legal standards. National movements in Egypt, Korea and India, and in much of the rest of Africa, Asia and South America, increasingly voiced their demands for self-determination in the language and phraseology of international law. Even if its codification as a positive right was only finalized in the 1966 International Covenant on Civil and Political Rights, the promise of self-determination derived its irresistible power in the 20th century from promising the recognition of organized people as legal subjects and on a level of sovereign equality.⁴⁵

³⁹ Throntveit, 'The Fable of the Fourteen Points: Woodrow Wilson and National Self-Determination', 35 *DH* (2011) 445; J. Fisch, *Das Selbstbestimmungsrecht der Völker: Die Domestizierung einer Illusion* (2010), at 148–157.

⁴⁰ E. Manela, *The Wilsonian Moment: Self-Determination and the International Origins of Anticolonial Nationalism* (2007).

⁴¹ Kernek, 'Woodrow Wilson and National Self-Determination along Italy's Frontier: A Study of the Manipulation of Principles in the Pursuit of Political Interests', 126 *Proceedings of the American Philosophical Society* (1982) 243.

⁴² B.A. Elleman, *Wilson and China: A Revised History of the Shandong Question* (2002).

⁴³ D. Rossini, *Woodrow Wilson and the American Myth in Italy: Culture, Diplomacy, and War Propaganda* (2008), at 269–286.

⁴⁴ V. Prott, *The Politics of Self-Determination: Remaking Territories and National Identities in Europe, 1917–1923* (2016).

⁴⁵ A. Becker Lorca, *Mestizo International Law: A Global Intellectual History 1842–1933* (2015), at 225–262; Fisch, *supra* note 39, at 217–248. International Covenant on Civil and Political Rights 1966, 999 UNTS 171.

In the end, the deliberations of Paris led to the most complex, detailed and far-reaching peace treaties in world history.⁴⁶ The fierce competition of various interests, the sweeping compromises at the cost of the defeated nations and the ambition to regulate numerous questions in minute detail created a settlement of enormous width and breadth. Moreover, the five major treaties – the Treaties of Versailles, Saint Germain, Neuilly, Trianon and the stillborn Treaty of Sèvres – were complemented by around 50 related agreements and conventions, ranging from minority protection and civil aviation to renewed rules on liquor traffic in Africa and the international status of Spitzbergen. When the Versailles Peace Treaty was delivered to the German delegation on 7 May, it was 415 pages long. Its 440 articles dealt in unmatched detail not only with questions of territory, disarmament and reparations but also, for example, with air traffic, international labour, fire insurance, the sale of Brazilian coffee and the return of the ancient skull of an Africa chief. It was ‘an amazing document’, wrote an American journalist, and he made the clairvoyant guess that this treaty might be ‘the most exhaustive and remarkable document of its kind that the world has ever seen’.⁴⁷

5 What About the Context?

What can be made of this legalism from a distinctly historical perspective? To read the peace treaties as an expression of a state’s free will seems as short-sighted as any attempt to connect their legalistic stance to the objectives of the drafters or to the national interests at stake. In both cases, the complex realities of diplomatic negotiations are ignored, and neither way can explain why international law was deemed so important in 1919 and not, say, in 1815 or in 1945. Instead, we need to take seriously the contradictions and political contingencies – the entire context of how and why the legitimacy of the peace was grounded in normative foundations. Far beyond the rules and treaty provisions themselves, what did the peacemakers actually see in international law? And to what ends were legal arguments employed in the murky worlds of diplomacy and foreign policy?

A closer look reveals that most delegates personally did not care very much for legal technicalities or formal questions and that they cared even less to make international law a defining feature of the peace. This general disregard is nowhere more obvious than in the case of Woodrow Wilson, of all people. It is a popular misunderstanding to assume that his prime goal was a ‘world order under international law’.⁴⁸ As a matter of fact, Wilson was very sceptical of international law and international lawyers. He kept a safe distance from the pre-war legalism of the Hague Conferences and was, for the same reason, highly critical, if not downright dismissive, of his own

⁴⁶ J. Fisch, *Krieg und Frieden im Friedensvertrag: Eine universalgeschichtliche Studie über Grundlagen und Formelemente des Friedensschlusses* (1979), at 612.

⁴⁷ H. Hansen, *The Adventures of the Fourteen Points: Vivid and Dramatic Episodes of the Peace Conference from Its Opening at Paris to the Signing of the Treaty of Versailles* (1919), at 299.

⁴⁸ Steel, ‘Prologue: 1919–1945–1989’, in M.F. Boemeke, G.D. Feldman and E. Glaser (eds), *The Treaty of Versailles: A Reassessment after 75 Years* (1998) 21, at 22. Cf. P.O. Cohrs, *The Unfinished Peace after World War I: America, Britain and the Stabilisation of Europe, 1919–1932* (2006), at 32ff.

secretary of state, Robert Lansing, a renowned international lawyer.⁴⁹ Even though Wilson would occasionally pay lip service to the 'reign of law' in international affairs, as the introductory quote of this article suggests, he continuously tried to avert what he saw as a legalistic attitude and formalistic rigour during the peace negotiations. When the Institut de Droit International used the occasion of the Paris conference to reconvene its activities, he told the scholars with unadorned frankness that, in his opinion, international law had been 'handled too exclusively by lawyers'.⁵⁰ Wilson's concept of world peace had little room for legal mechanisms, inflexible treaty arrangements or even a court-like institution. The League of Nations, in his opinion, had to be based on mechanisms for political negotiation and reconciliation, animated by the idea of a 'New Diplomacy' of free, open and public deliberations in all matters of war and peace. The League machinery was to be a 'living thing', Wilson told the plenary session in February 1919, and it would be 'a vehicle of power, but a vehicle in which power may be varied at the discretion of those who exercise it and in accordance with the changing circumstances of the time'.⁵¹

A legalistic approach to international relations would undoubtedly have argued differently. Yet a similar reluctance can be observed in almost all of the delegations. The British were particularly eager to avoid any discussion about the freedom of the seas and even had the secret plan to withdraw from the 1856 Paris Declaration on Maritime Law if need be.⁵² On the side of France, Georges Clemenceau repeatedly disparaged Léon Bourgeois, who was not only the French delegate to the Commission on the League of Nations but also well known as a fervent advocate of '*pacifisme juridique*' and the juridification of international affairs.⁵³ And an unnamed Italian delegate confessed to Manley O. Hudson, by that time a junior counsel in the American delegation, that all 'talk about justice was mere bosh, and that statesmen should not deal in such rubbish. ... Italy did not enter the war because of any ideals or any sense of justice or right'.⁵⁴

Given this widespread hesitation, how can we explain the apparent legalism of the peace settlement? The best answer can be found in the binding spell that the Allied rhetoric of defending and upholding international law put on the entire peace settlement. From the start of the negotiations in January 1919, the victorious powers found

⁴⁹ Coates, *supra* note 2, at 126ff, 152ff; Smith, 'The Wilsonian Challenge to International Law', 13 *Journal of the History of International Law* (2011) 179; see also R. Lansing, *The Peace Negotiations: A Personal Narrative* (1921), especially at 107. For the broader context, cf. Zasloff, 'Law and the Shaping of American Foreign Policy: From the Gilded Age to the New Era', 78 *New York University Law Review* (2003) 240.

⁵⁰ Wilson, After-Dinner Remarks of 9 May 1919, reprinted in *PWW*, *supra* note 1, vol. 58, at 599.

⁵¹ Plenary Session of 14 February 1919, reprinted in *FRUS*, *supra* note 21, vol. 3, at 212; see also Wertheim, 'The League of Nations: A Retreat from International Law?', 7 *Journal of Global History* (2012) 210. On the topic of a 'New Diplomacy', cf. A.J. Mayer, *Political Origins of the New Diplomacy, 1917–18* (1959).

⁵² Cf. Hurst, Letter of 21 January 1919, file FO 372/1185, no. 176416, The National Archives, Kew, United Kingdom; Hull, *supra* note 10, at 207ff, 323.

⁵³ Cf. Jackson, *supra* note 20, at 272–275; M. Sorlot, *Léon Bourgeois, 1851–1925: Un moraliste en politique* (2005), at 280–284.

⁵⁴ M.O. Hudson, *Private Journal*, 15 June 1919, Historical and Special Collections, Hudson Papers, box 166/1, 453, Harvard Law School Library, Cambridge, MA, USA.

themselves captives of their own arguments, maybe even of their own pretence and pretext. To maintain the legitimacy of the peace treaties and to sustain their own wartime rhetoric, they could not help but to translate all political, economic and strategic goals and every personal ambition and lust for revenge into provisions that would conform to, or at least not distort, the idea of an international rule of law. Inadvertently, yet inevitably, the Allies bound themselves and their decision-making to their own normative claims.

This predicament was not lost on the defeated nations. The Germans were clearly aware of the Allies' hesitant entanglement in legalism. After the peace conditions had been presented in Versailles, Ulrich Graf Brockdorff-Rantzau, the head of the German delegation, repeatedly demanded 'the peace of justice [*Rechtsfrieden*] which had been promised to us'.⁵⁵ The entire German negotiation strategy was firmly built on legal, and often captious, reasoning. The most prominent, but certainly not the only example, is the well-known allegation that the Allies were legally bound by a pre-armistice agreement – the Lansing note of 5 November 1918 – to make peace along the lines of Wilson's Fourteen Points. The theory of a *pactum de contrahendo*, an instrument practically unknown to international legal theory before 1918, was brought up and used to great effect. The more the Germans insisted on the binding character of this diplomatic note, the more hard pressed the Allies became. It was almost impossible to confirm the Fourteen Points politically yet, at the same time, reject all legal ties to their vague and contradictory terms.⁵⁶ The German delegation consciously tried to make use of this dilemma. There were fierce attacks on Allied hypocrisy as well as on the treaty for its alleged discrepancy to the 'the agreed legal bases [of the peace], ... and the general idea of international law'.⁵⁷

The strategic purpose of these demands is easy to see. It was an attempt to stave off what was understood as a brutal and unjust dictate. Most modern scholarship rightly argues that the provisions of the Versailles Peace Treaty did not really justify the deep German resentment that resulted, though the mental rejection of military defeat as well as a general disregard of the Allied understanding of the war made any realistic assessment by Berlin almost impossible.⁵⁸ The unyielding German plea for a '*Rechtsfrieden*' would nonetheless further intensify the legalistic stance on all sides, weakening any chance of reaching a middle ground. It was a clever strategy to pick up the Allied claim of promoting the international rule of law and to turn it against the

⁵⁵ Brockdorff-Rantzau, Letter of 29 May 1919, reprinted in *FRUS*, *supra* note 21, vol. 6, at 795. It should be noted that the original German phrase of '*Rechtsfrieden*' has a wider meaning than 'peace of justice'. On the German strategy in general, see K. Schwabe, *Deutsche Revolution und Wilson-Frieden: Die amerikanische und deutsche Friedensstrategie zwischen Ideologie und Machtpolitik 1918/19* (1971). For an unusual sympathetic account, cf. Fried, 'Brockdorff-Rantzau and the Struggle for a Just Peace', 16 *Diplomacy and Statecraft* (2005) 403.

⁵⁶ This can still be observed in the detailed discussion of the legal bases of peace in *A History of the Peace Conference of Paris*, 6 vols (1920–1924), vol. 2, at 245–419.

⁵⁷ Observations of the German Delegation on the Conditions of Peace of 29 May 1919, reprinted in *FRUS*, *supra* note 21, vol. 6, at 803.

⁵⁸ Cf. Marks, 'Mistakes and Myths: The Allies, Germany, and the Versailles Treaty, 1918–1921', 85 *Journal of Modern History* (2013) 632; Barth, *supra* note 26, at 444–464; MacMillan, *supra* note 19, at 469–493; see also most of the chapters in Boemeke, Feldman and Glaser, *supra* note 48.

victorious nations. But this came at the expense of settling for a compromise. When Walter Schücking, a respected international lawyer and pacifist, attacked the Allies for a 'might before right' attitude in the official German counter-proposal of 29 May,⁵⁹ he did so against the explicit advice of the legal counsels of the *Auswärtige Amt*.⁶⁰ From a political point of view, a more low-key approach would certainly have made more sense and maybe even resulted in better peace conditions. A German attitude that avoided the impression of sophistry and dogmatism might have allowed the Allies gradually to soften their legalistic and normative attitude and to move more quickly to a political solution in the years to come.

6 Conclusion

When Woodrow Wilson spoke of defending and re-establishing the 'reign of law' in 1918, he had no coherent legal programme in mind but echoed widespread and vague expectations among the Allied nations. Yet he could not anticipate how much those and similar claims would actually stake out the ground for the entire peace settlement and to what degree legalism would leave its mark on the treaties. All of the Allied decisions, all of the rhetoric employed, all of the treaty provisions drafted had to conform to this overarching theme of defending international law and promoting international society in a way that was historically unprecedented. In the end, both victors and vanquished were almost competing in invoking law, legality and justice to rationalize their positions. One should not be surprised to find hidden objectives, a barely veiled political agenda and fierce bargaining beneath this cloak of legalism. However, the attempts to handle, formulate or disguise political problems in the language of international law significantly affected, and altered, the search for peace. It created a normative reality beyond foreign policy that weighed heavily on all decision-making, leading up to what may be the most fundamental concern of any legal history of the peace settlement: is there any way to distinguish between a 'real' and a 'false' understanding of international law? And, if so, would its normativity differ in some way? Can we differentiate between a 'genuine' legal and an 'instrumental' political usage of legal arguments in the drafting of the peace treaties?

These questions touch upon fundamental questions of international law to which historians cannot seriously contribute, let alone provide answers. But there are good reasons to distrust the popular supposition that international law is something devoid of, or even opposed to, power politics. The peace after the Great War offers us a good example on how law, legality and justice in international affairs does not always lead to a reasonable and balanced solution but, in some circumstances, may make it more difficult to find a bearable compromise and a peaceful coexistence. This is in no way an

⁵⁹ Observations of the German Delegation on the Conditions of Peace of 29 May 1919, reprinted in *FRUS*, *supra* note 21, vol. 6, at 808.

⁶⁰ Cf. Simons, Letters of 22 May and 30 May 1919, file R 25808, Politisches Archiv des Auswärtigen Amtes, Berlin, Germany; see also Krüger, *supra* note 34, at 202. On the authorship of Schücking, cf. A. Luckau, *The German Delegation at the Paris Peace Conference: A Documentary Study of Germany's Acceptance of the Treaty of Versailles* (1941), at 85.

argument against international law but, rather, an appeal that it should be considered in the context of its time and of the situation at hand. International law is interwoven, in many different ways, with the hopes and expectations, the political dynamics and the moral yearnings of a given age, and, far beyond having a fascinating history of its own, it can also – as in 1919 – have a far-reaching impact on the course of history.