THE MOVE TO INSTITUTIONS

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I. INTRODUCTION

The discipline of "international institutions" has made much of 1918.1 Although most histories of the field stress the importance of


1 W. Kuehl, Seeking World Order—The United States and International Organization to 1920 (1969), illustrates the tendency to locate the origin of modern international institutions in 1918, and retains an extremely idealist orientation. The first chapter is entitled "An Idea Evolves," id. at 3 (covering the period from 1300 to 1815), and the last, "An Idea Grows," id. at 232 (the years surrounding 1917). On the discipline of international institutions, see Sohn, The Growth of the Science of

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narrative nineteenth-century European institutional innovations, they express little doubt that the modern international institution was born with the League of Nations in the aftermath of the First World War. This article examines the transformation of these historical developments, and in particular of war, into the origin of an institutional and academic practice.

By locating its origins in a set of historical developments, the discipline of international institutions distinguishes itself from public international law, which generally traces its origin to the texts and ideas of a few Europeans who wrote about international law and statecraft prior to the 1648 Peace of Westphalia. Modern scholars of public international law write about the relationship between the ideas that comprise their discipline and various historical practices. They consider the historical connections between the development of the


3 This is evident not only in the prefaces to various standard treatises, see, e.g., J.L. Briely, The Law of Nations—An Introduction to the International Law of Peace (2d ed. 1936); I. Brownlie, Principles of Public International Law at vii (2d ed. 1973), but also in the topics regarded as of theoretical interest, see, e.g., R. Falk, The Status of Law in International Society (1970); L. Henkin, How Nations Behave—Law and Foreign Policy (2d ed. 1979); see also Relevance, supra note 1 (debates about the relevance of international law), and in the doctrinal efforts to ground the authority of public international legal norms while retaining their independence, see D. Kennedy, International Legal Structures (1987) (considering "sources" of international law in chapter II).
modern than public international law. Yet both the academic discipline of international institutions and the establishment of the institutions themselves are textual practices. Thus, Iris Cladue begins his classic American college text *Swords Into Plowsshares* by asserting that:

> It is useful to consider the nineteenth century as the era of preparation for international organization, and, for this purpose, to treat 1815, the year of the Congress of Vienna, and 1914, the year of the outbreak of World War I, as its chronological boundaries. Starting thus, we establish the years which have passed since the momentous events of 1914 as the era of establishment of international organization, which, in these terms, comes to be regarded as a phenomenon of the twentieth century.  

That Cladue uses the word “establish” twice in this paragraph, once to refer to “our” own historical periodization and again, this time with emphasis, to refer to history’s production of an institutional regime is revealing, for indeed, both were products of a similar imagination. Ruminating about the origin of international institutions as a discipline no less than as a practice raises issues about what might be thought of as the textualization of social life rather than about the development, originality, and integrity of the word. By what mechanism does the discipline encompass its historical situation in a legal process? How did international life come to be “institutionalized”? As comprehended by the discipline, the year 1918 originates the international institution in three ways. First, it executes a break between a preinstitutional and an institutionalized moment. Second, it establishes a progressive movement across that break into the League of Nations. Third, it inaugurates an institutional practice of repetition and exclusion which sustains the momentum of that movement into the institution.

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*b* Cladue goes on to acknowledge that “[t]here is an element of artificiality in this scheme, as in all efforts to divide history into distinct periods.” Id. He then defends his effort in two ways: first on utilitarian grounds, and then by invoking a naturalist metaphor: “[b]ut it is nevertheless a serviceable device for the study of the process of organizing international relations.

Clearly, the establishment of the League of Nations was an event of fundamental importance, worthy of being considered a decisive forward step in that evolutionary process. To change the figure, eighteenth-century institutions provided the ancestry, but the League of Nations provided the parentage, of international organization as we know it today.

Id. The interesting point is that Cladue refers to the factual development itself (“Clearly . . .”)—the very development whose importance Cladue’s categorization scheme is meant to establish—to shift from instrumental to naturalistic defense gambits.

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10 L. Oppenheim, First Lecture—The Aims of the League of Nations, in *The League of Nations and its Problems—Three Lectures 1, (1919)* (hereinafter *League Problems*) (emphasis omitted), represents these sentiments most adequately when he says: “Any kind of an International Law and some kind or other of a League of Nations are interdependent and correlative,” id. at 6, “where there is a community of interests there must be law,” id. at 8, and “no highly developed Community can exist for long without Courts of Justice,” L. Oppenheim, Third Lecture—Administration of Justice and Mediation Within the League of Nations, in id. at 57, 61. From his point of view, organization arises of necessity from its antithesis—disorganization. It is the collective effort of society, arising out of necessity, to reject the anarchy that has thus far characterized international relations.

11 Indeed, some scholars have located precursors to this tendency in European statecraft following the Napoleonic wars and the Thirty Years War, among others. For an elaboration of the joint birth of international law and the modern state system, see Gross, *The Peace of Westphalia, 1648-1948*.
disruptive, out of the ordinary, chaos.\textsuperscript{12} In Section I of this article, I explore the interpretive mechanisms deployed within the discipline—among them notions borrowed from diplomatic history—to sustain this image of a discrete break against which to construct an enduring peace. Some of these mechanisms are purely discursive, for example, the characterization of the 1918 break as a movement across the boundary between politics and law, or passion and reason, or reality and utopia. Others are exclusionary, writing the history of the break as the successful transcendence of extreme positions and politics thought typical of chaos. In 1918 this was most pronounced in the exclusion of feminists and radical reformists from the Peace Conferences and in the temporary exclusion of utopian lawyers by realist politicians.

These images of the relationship between war and peace were associated with an image of the institution as the opposite of the social breakdown of war.\textsuperscript{13} The literature has contrasted organized life with

\textsuperscript{12} See, e.g., G. Mangone, A Short History of International Organization 167 (1954) (“Three monstrous wars [Napoleonic, World War I, World War II] have led to three same anachronistic international organizations.”); see also H. Braisford, A League of Nations 1-2 (1917) (The war “struck us with surprise as the thing it is, an anachronism, an obsolete barbarity, a blot on civilization.”). These men see war as the impetus driving humankind toward international organization. See G. Mangone, supra, at 34 (“The havoc of international war has compelled statesmen to turn their attention to the positive construction of peace by international organization.”). But war has also been seen as an organized activity designed by monarchs and aristocrats who “could make war without personal hatred, and knew well enough that war must be carried on with some restraint, if only for the practical reason that the enemy of the day might be the friend of the morrow.” J. Williams, Chapters on Current International Law and the League of Nations 67 (1929). Even today there are many statesmen who see war, or the threat of war, as a tool of diplomacy or a cool reaction to an impassioned situation. See, e.g., R. Nixon, The Real War 293-95 (1980) (suggestions for negotiating with Soviet leaders).

\textsuperscript{13} According to Claude, the “total collapse of world order following World War II” produced not so much a sense of the futility and hopelessness of international organization as a vivid awareness of the need for and a robust determination to achieve an improved system of international organization.” I. Claude, supra note 8, at 57. Law is often seen as the harbinger of order. Thus, Williams states: “The alternative to war is law . . . .” J. Williams, supra note 12, at 67. Disorganization is viewed as either the result of war (as Williams suggests) which law must rectify, the producer of war, see I. Claude, supra note 8, at 57 (“[International disorganization . . . produced the greatest and most disastrous of conflicts—World War II.”), or simply a natural state necessarily countered by law, see S. Williams & A. de Mestral, An Introduction to International Law 3 (1979) (“Chaos is inimical to any group of people and law has been and still is the method by which a community, whether it be made up of individual people or of states, has been brought and bound together by a set of recognized standards.”). In any case, war, whether it produces, results from, or exemplifies disorganization (or any combination of the three), can only be tamed by organization as represented by law or legal institutions. This notion is, of course, hardly restricted to the discipline of international law, which shares much, including an increasing interest in institutional and bureaucratic issues, with the literatures of political science, organizational theory, and sociology of institutions. See, e.g., W. Zwerman, New Perspectives on Organization Theory (1970); Goedner & Saun-
from passion into reason, from mechanical stasis into inspired social progress. 16 Second, and more importantly for the discipline, the institution is a continual transcendence of chaos, a continual movement forward from its origin and differentiation from its own history. 17 The current form of the institution responds to its preparation, reminds us of the moment at which war was set aside, and promises the institution's withering away and the arrival of its successor—a peace which could finally leave the threat of war behind.

The second and third Sections of this article explore this institutionalization practice. Section II analyzes the textual mechanism which establishes the institution: the Covenant of the League of Nations. The use of a text to signal the move, and indeed to move, from chaos to order is part of the genius of modern institutional practice. This section considers the relationship between the peace negotiations and the drafting of the League Covenant, the international dynamics of the Covenant itself, and the relationship envisioned by the Covenant between the moment of textual establishment and the plenitude of the institution being established.

The system of textual establishment illustrated by the League Covenant set in motion an institutional and disciplinary practice quite different from the political practice it sought to leave behind. 18 Sec-

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16 While war itself might be full of "noise and passion," H. Brailsford, supra note 12, at 324, it has been seen as the result of a static social order helpless to make the dynamic changes necessary to prevent it. War arises in this view because of "the inertia, the impotence, the suspicion, the lack of social sense which [stand] in the way of these necessary changes." Id. at 326. Only through the organization of nations which regulates and organizes change can the evil of war be avoided. See id. at 326-27. Claude, on the other hand, sees the awakened rationality of the 19th century toward war in negotiation and compromise as the beginning of the victory of reason over passion. I. Claude, supra note 8, at 32-33. Rationalism is equated with reckless passions, and only through effective organization can this irresponsible tendency be subdued. Id. Both writers, then, see organization as the means to end war. However, while Brailsford asserts that this organization will inspire us toward social progress, ending the rigidity and inflexibility that causes war, Claude holds that organization, rather than directing passions, will triumph over them, leaving us with a stable and ordered world.

17 For example, Claude, speaking of the history of the United Nations, says:

As in the case of the League, the United Nations reflected the influence of a variety of formative factors. It was not simply a brainchild of idealists, a confluence of nationally oriented statesmen, a flowering of historically planted seeds, or an eponym upon the surface of contemporary world politics. It was all these things and more.

... The United Nations could be described, with considerable justification, as a revised version of the League.

1. Claude, supra note 8, at 60.

18 The notion that the League would inaugurate a "new order" of diplomacy was held by many. Harold Nicolson, a British diplomat and scholar whose professional coming of age occurred at the Paris Peace Conference, wrote one book prior to the War criticizing the "old diplomacy" practiced by his father. H. Nicolson, Portrait of a Diplomatist (1930). A confirmed Wilsonian whose ideals found expression in notions of an open, institutionalized diplo-

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II. THE ORIGIN OF THE LEAGUE OF NATIONS

In this Section of the article, I examine several basic ideas about the League's origin that recur in the international institutional literature. Many of these ideas are shared with or borrowed from the literature of diplomatic history. Perhaps unsurprisingly, contemporaneous plans and proposals for a League participate in the same narrative. Of the three establishment themes explored in this article, Nicolson describes the shattering of these ideals in 1919 at the Paris Conference as they took institutional form. In an introduction written years later, Nicolson equivocates on his earlier state of innocence. Later in his career, this equivocation became a conviction that there was much useful continuity between the "old" and the "new" diplomacy, and that the institutionalization— as a result of the process of democratization—of certain diplomatic functions was the distinctive contribution of the new diplomacy.

I have for long wished to paint a picture of the new diplomacy as a sequel, or counterpart, to the sketch of the old diplomacy which I essayed in the biography of my father. The more I have considered the subject the less have I come to believe in any real opposition between the two. Diplomacy essentially is the organized system of negotiation between sovereign states.
icle—break, movement, and repetition—the first is best illustrated by these texts about the League's origin. All are concerned to establish a rupture in the narrative of history which could accommodate something as original as the institutionalization of international relations. In these materials, this break is most commonly articulated as part of the relationship between war and peace. As they enforce a break between war and peace, these materials also illustrate the transformation of that difference into both a forward momentum for the establishment of institutions and an institutional style which can sustain that momentum.

A. Diplomatic History and the Break of War

For three generations, students of international relations and diplomatic history have been taught to treat the First World War as a watershed. In much of this literature, the War is treated as the

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20 E.g., B. Schmitt & H. Vedeler, The World in the Crucible 1914-1919, at 27 (1984), provides a classic example of this vision:

From the perspective of nearly seven decades, the shaping influence of this complex of events on our century still looms large. The world came through the crucible of change from 1914 to 1919 reheated. More than anything else, the war separated the world of the nineteenth century from that of the twentieth. The wide range of its impact is still very much a part of our life.


The further the Great War of 1914-1918 recedes into the past, the more clearly we see how great a turning-point it was in human affairs. We have passed into a new historical era, and all our problems, political, social and economic, are profoundly different from what they were in that remote time which we call “pre-war.”

R. Muir, Political Consequences of the Great War 9 (1930). See F.L. Bennis, Europe Since 1914 (rev. 2d ed. 1956); F.L. Bennis, European History Since 1870 (1938); H. Holborn, The Political Collapse of Europe (1951); H. Nicolson, The Evolution of Diplomatic Method 184-93 (1954); C. Petrie, Diplomatic History 1713-1933 (1946); R. Sontag, European Diplomatic History 1871-1932 (1933) [hereinafter Diplomatic History]; see also V. Welleskey, Diplomacy in

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21 It is in this spirit that people writing about public international law and international organizations treat 1918 as a break in the evolutionary development of international law.
contemporary international institutions.\textsuperscript{22}

Although texts which treat 1918 as a sharp historical break in both the development of international institutions and in the analytic tradition spawned by that development rely upon the common image of the War as an interruption in the historical narrative, they also depart from it in important ways. It seems obvious that speaking of the War as a “break” oversimplifies what were complex changes, not only in the international political order, but in cultural assumptions, legal theory, and much, much more. At best, “the First World War” seems useful shorthand for a variety of quite different changes. Allowing the War to signal a variety of historical changes is different from situating a single change—a move into institutions—in the peace which resulted from that War.\textsuperscript{23} Moreover, we find in 1918 not merely a restoration of peace following the rupture of war, but a second break, a break in the pattern of international interaction.

Literature about the origin of the League thus relates two different breaks—one which it borrows from diplomatic history and one which it creates in 1918. The first of the two ruptures relies comfortably on common images of the difference between war and peace. In general parlance, the First World War is treated as a disruption, an intrusion into the affairs of men which dramatically altered their “flow.” The War was a “catalyst,” a “crucible,” a “sudden storm sweeping away the old order.”\textsuperscript{24} In this vision, war is as fundamen-

\textsuperscript{22} See, e.g., I. Claude, supra note 8, at 41-55; F. Kirgis, supra note 1, at 6; Schmitt and Vedeler, in their chapter entitled “The World Reshaped,” subitle the second section, “The New International Order” and suggest that: “The new international order was fashioned not simply by the peace settlement at the end of the war but by the peace settlement and the war.” B. Schmitt & H. Vedeler, supra note 20, at 462.

\textsuperscript{23} On the League’s emergence from the War, see e.g., I. F.P. Walters, supra note 10; see also C. Archer, International Organizations 20 (1983) (“If the institutions of the League were fashioned by the immediate experience of wartime cooperation rather than by nineteenth-century writers, the activities pressed by the members through these institutions were also more determined by memories of 1914-18 than by abstract concepts.”). However, Harold Nicolson, who embraces the new/old rhetoric in his biography of his father, later retracts his earlier views. See Peacemaking 1919, supra note 18.

\textsuperscript{24} Much of this discussion is seen as shifts in the balance of power. See D. Dallin, The Big Three—The United States, Britain, Russia (1945); J.J. Ennett, The Agate of Revolution—A Survey of European History Since 1815, at 170 (n.d.); H.F. Soward, Twenty-Five Troubled Years 1918-1943 (1944). The approximate equality of the five Great Powers—Britain, France, Prussia-Germany, Austria-Hungary, and Russia—is treated as having been responsible for stability, yet the five powers also seemed to have been threatened by non-European supra note 20, at 2. The power balance also seemed to have been threatened by non-European forces, most notably the United States and Japan. See id. at 3-4. In this vision, periods of peace exist when sovereign states are roughly equal in power. See A.J.P. Taylor, supra note 20, at 36 (“Europe has known almost as much peace as war; and it has owed these periods of peace as a result of the changing balance of power.”). War arises when one state seeks to upset this balance or peace to the Balance of Power.”). War arises when one state seeks to upset this balance or peace to the Balance of Power.”)
In diplomatic history, particularly as rendered by literature about the origin of international institutions, the First World War punctuates an ambiguous difference between an "old" and a "new" order. On the one hand, the nineteenth century is described as the era of unbridled sovereign autonomy, a Hobbesian world of independent and all-too-often capricious princes competing for colonies, respect, and power. Such stability as seemed possible was generated by the fortuitous balance of five relatively equal Great Powers—a decentralized, but effective, Leviathan. The War, by crippling these powers, introducing a few new ones, and generally forcing acknowledgment of interdependence, created the conditions under which a social order among sovereigns could be achieved. This change was epitomized, or perhaps symbolized, by the dramatic growth of international law, commerce, and organization in the immediate post-War period.

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27 See, e.g., A.J.P. Taylor, supra note 20, at 61 ("In the state of nature which Hobbes imagined, violence was the only law, and life was 'nasty, brutish and short'. Though individuals never lived in this state of nature, the Great Powers of Europe have always done so."); see also J. Dulles, supra note 15, at 134 (totalitarian warfare as an act of mass sacrifice); I. F.P. Walters, supra note 10, at 1-2 (Before the League, states owed "no allegiance to any higher authority.").

28 Thus, Holsti states:

A significant feature of eighteenth-century European international politics was the relatively even distribution of diplomatic influence and military capabilities among the major states . . . . This relatively equal distribution of power and influence made it possible for the dynastic states to shift alliance partners without radically upsetting the structure of the whole system.

K. J. Holsti, supra note 20, at 2; see B. Schmitt & H. Vedeler, supra note 20, at 1 ("For two and a half centuries the European political order was based on the classical balance of power, or the system of relations associated with the five Great Powers of the Pentarchy. Historically, the five states had been more or less equal in power, reflecting a more static society."); see also R. Albrecht-Carrié, supra note 21, at 5-6 ("A community of sovereign entities must of necessity exist in a state of anarchy, the denial of the subjection to law."). European stability throughout the 19th century is attributed to the balance of power which decentralized power through alliances between two or more sovereign states. See A.J.P. Taylor, supra note 20, at 61 ("No one state has ever been strong enough to eat up all the rest; and the mutual jealousy of the Great Powers has preserved, even the small states, which could not have preserved themselves."). Elsewhere this balance of power is itself seen as law:

Power is the great regulator of the relations among states. But in a situation where a number of Powers existed, roughly of a comparable order of magnitude, it came to be an accepted convention that all, great and small alike, had an equal right to this existence; the balance of power may be regarded as a theory, or law, that none could break with impunity.

R. Albrecht-Carrié, supra note 21, at 6.

29 In short, World War I influenced the creation of the League by stimulating efforts of the victorious powers to do in peacetime the things that should have been done before the war in order to prevent it, and to continue doing the things which they had found it possible to do during the war in order to win it.

I. Claude, supra note 8, at 48; see R. Muir, The Interdependent World and its Problems 1-28 (1932); O. Newfang, The Road to World Peace, 133-51 (1924); B. Schmitt & H. Vedeler, supra note 20, at 462; P. Slosston, Twentieth Century Europe (1927).

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this view, the movement from the old to the new order brought about by the War was a movement from chaos to order.

On the other hand, nineteenth-century diplomatic history also presents a tale of secret intrigues, entangling alliances, and monarchical imaginations frozen by rigid military plans, inflexible commitments, and ossified notions of national honor and sovereign prerogatives. The War, by demonstrating the bankruptcy of these arrangements, created the conditions for an international liberal order of democratic nations and open covenants. Somewhat ironically perhaps, this change was also symbolized by the dramatic growth of international law and organization in the immediate post-War period. In this view, the movement from the old to the new order brought about by war was a movement from order to liberty.

If the break between war and peace is unambiguous, the difference marked by war between the two peace is uncertain. The post-War order of international law and institutions inherits both a move-
ment from chaos to order and a shift from order to liberty. The juxtaposition of two differences—between war and peace and between peaceful orders—thus creates a sense of forward movement which shapes the order it enables. The "liberal" post-War institutional order is different because it avoids, and so long as it continues to avoid, both the anarchy and the rigidity of nineteenth-century international society.32 If the War placed the evils of anarchy and totalitarianism in the past, the new order must keep them at bay.33 For the institutional regime actively to exclude what had been left behind by the break of war, the new order must repeat the movement by which it was established.

B. International Institutions and the Move to Peace

When the literature about international institutions contemplates its origin, it usually shares in the image of war as a rupture in a continuing civilization, an intrusion into the social order which hardens and tempers it, baptizes it perhaps, but is not itself a part of the institutional regime. For some writers, World War One was the first such war, the first which seemed more than the continuation of policy by other means.34 The literature associates this rupture with motion for

32 Claude points to the movement, through international organization, from anarchy to order:

In functional terms, the process of international organization has brought greater progress toward a governed world than has been generally recognized, and certainly more than is acknowledged by those who adhere to the doctrinaire view that government and anarchy are the two halves of an absolute either-or formula.

The last century, and particularly the last generation, has been an era of continuous development of patterns and techniques for managing the business of the international community.

I. Claude, supra note 8, at 435. He then delineates the institutions which have arisen since the War and that hold the possibility for continual advancement into order. Id.

33 Mangone, while commending the world on its progress, warns of the dangers of too little law.

The history of international organization indicates a slow but reasonable way to a respectable world society. Succeeding headlines of the latest catastrophe, the latest revolution, the latest aggression emphasize the unhappy plight of the twentieth century. That the world, lashed by so many misfortunes, manages to keep its head up and its feet forward is a wonder. But attention ought not to be diverted from the work of international organization, so courageously wrought, so intricately patterned, for here is a plan for universal progress and peace with justice in this time of troubles. Man in his tortured endeavors to bring law and order to his society is not beyond smashing such a design.

G. Mangone, supra note 12, at 303. This double orientation is often associated with a balance between too much and too little law. See, e.g., L. Henkin, supra note 3, at 3-7 ("Realists" who do not recognize the uses and force of law are not realistic. "Idealists" who do not recognize the law's limitations are largely irrelevant to the world that is.).

34 In the intervals between these explosions of maximum violence, war was considered an extension of policy. Between the Congress of Vienna in 1815 and the

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1. Claude, supra note 8, at 44. In general, the League is seen as the flowering of adolescent 19th-century institutional experiences:

The formation of the League was in part a process of imitation of the organizational forms and types of the nineteenth century. But strict imitation was not so much in evidence as completion, elaboration, and progressive adaptation of the primitive prototypes of international organization. The Council of the League was a new edition of the Concert of Europe, but it was a significantly revised edition, incorporating the principles of legal definition of authority and terms of reference, institutional continuity, regularity of session, and balanced composition of great and small power representatives. The Assembly represented the realization of the hopes and plans of the Hague statesmen for a general conference of the nations, meeting periodically without dependence upon the initiative of a single state and equipped to develop standing rules of procedure. The Secretariat was an institution to develop standing rules of procedure. The Secretariat was an institutional flowering of the seminal concept of the international bureau which had been found in the earlier unions.

Id. at 43 (emphasis in original).
other of the elements of what is now imagined to be a complete institutional regime. Typically, these texts mention the public international unions and river commissions as incipient administrations (although limited in the scope of their portfolio), the "concert system" as a protoparliament (partial because still in periodic rather than "standing" session), and the Permanent Court of Arbitration at the Hague as a judicial forerunner. Post-1918 international organization, by contrast, is seen as an integrated system. Although the League system would develop after 1918, this image emphasizes that all crucial institutional organs were in place by 1925. Thereafter, progress or maturation would be measured by the expansion and

36 Both Bowett and Claude, for example, after mentioning the Concert of Europe and the Hague System, enumerate the development of public and private international unions. See D.W. Bowett, supra note 1, at 4; I. Claude, supra note 8, at 34-38.

37 Frequently, the Concert system (or "Conference system") is mentioned as forerunner to more mature international organization:

"The machinery of the Great Power Conference was executive, legislative, and mediatory. It took executive action in the sense of ordering sometimes armed forces to produce certain results. It was legislative by reason of its pronouncements on general questions of international law, and it was sometimes a judge between the conflicting interests of its own members or of other Powers. In all these functions it anticipated part of the machinery of the League of Nations." C.K. Webster & S. Herbert, supra note 10, at 20.

38 To Mangone, the League of Nations differentiated itself as a legal forum, G. Mangone, supra note 12, at 129, and as a comprehensive political forum, id. at 128. "A salient difference between international organization before and after the League of Nations lies in the achievement of a permanent agency through which states can collaborate continuously on the grave problems which affect the peace of the world." Id.

39 The Permanent Court of International Justice, which was anticipated in Article 14 of the Covenant but not definitively established until its Statute received ratification by a majority of the members of the League on August 20, 1921, constituted the full-fledged international judicial organ which the Hague Conferences, dissatisfied with the primitive Permanent Court of Arbitration, had vainly tried to create. I. Claude, supra note 8, at 43 (footnote omitted).

40 The fragments of international organization that existed before 1918 only came together as an integrated whole with the founding of the League. See, e.g., id. at 41 ("[N]ineteenth-century institutions provided the ancestry, but the League of Nations provided the parentage, of international organization as we know it today.”). G. Mangone, supra note 12, at 295. Although peace does preserverving history for granted.” According to Mangone, supra note 12, at 295. "[I]nternational organization offers a way of channeling the egocentric drives of a sovereign state into world cooperation." id. at 296—"[w]hat international organization offers is a way of channeling the egocentric drives of a sovereign state into world cooperation.” id.

41 Zimmern, for example, divides his book into three sections: "The Pre-War System," "The Elements of the Covenant," and "The Working of the League." A. Zimmern, supra note 19. He implies that there are two systems: the before-League and the after-League. Id. at 1-9; see also I.F.P. Walters, supra note 10, at 1-2:

Before the League, it was held both in theory and practice that every State was the sole and sovereign judge of its own acts, owing no allegiance to any higher authority, entitled to resent criticism or even questioning by other States. Such conceptions have disappeared for ever: it is not doubted, and can never again be doubted, that the community of nations has the moral and legal right to discuss and judge the international conduct of each of its members.
tory.\textsuperscript{46} Similarly, but in a far less overt way, institutional development is seen to have been possible in part because of the diplomatic movement from an old to a new system.\textsuperscript{47} As a result, these two sets of stories reinforce one another through their distance from one another. The movement from old to new diplomacy can be seen as the movement from chaos to order and from order to liberty because it is accompanied by an institutional transformation. Simultaneously, it is the institutional and diplomatic continuity across the War which makes the War the repository of the phantoms of both chaos and tyranny against which both systemic evolutions are to be understood. This displacement between diplomatic history and the history of international institutions continually restates the League's originating situation.

By displacing institutional literature and diplomatic history from one another, treating institutions first as both the symbol and the by-

\textsuperscript{46} Meanwhile, the continued existence of the League since 1920 has modified in some important respects the older practices of diplomacy. Apart from the fundamental conception of an organization of mutual insurance against war, apart from the surrender of national sovereignty which a strict adherence to the Covenant would imply, the League represents an innovation in all previous attempts at international co-operation, and for three main reasons. In the first place it is based upon a Covenant or body of rules and principles. In the second place it holds annual meetings in a definite locality and at a definite time. And in the third place it possesses a permanent secretariat of trained international experts.


\textsuperscript{47} See L. Henkin, supra note 3, at 317 ("If diplomacy can maintain a climate of order and provide lawful means for achieving change, these will induce the acceptance of law and the development of institutions for its observance."). Nicolson suggests that the movement towards greater democratic control in diplomatic practice which characterizes the "new" diplomacy led to the development of many modern institutions:

[It] was hoped by many of us that this new experiment in conducting diplomacy from below upwards might in fact prove a valuable innovation in international practice.

To a certain extent these hopes were realized in the Secretariat of the League of Nations, a body which acquired and still maintains the highest standards of efficiency and co-operation.

H. Nicolson, supra note 46, at 158. Despite its misgivings, Nicolson asserts that the movement is still one of progression rather than regression:

If, therefore, one concentrates upon the continuity of diplomatic theory rather than upon its discontinuity, one is impressed by the fact that, in spite of the several different shapes which it assumed, and in spite of dramatic periods when violence momentarily became more authoritative than reason, it is possible to recognize a distinct upward curve of progress. What is the nature of that progress? I should define it as follows: "The progress of diplomatic theory has been from the narrow conception of exclusive tribal rights to the wider conception of inclusive common interests."

Id. at 37.

\textsuperscript{48} One way to sense the difference between these disciplines is in their respective terminologies for the entity under scrutiny. The literatures of political science and diplomatic history discuss "systems" of international order—balance of power, bipolar, and so forth—while the literature of international law tends to discuss "institutions." Standing between these terms is the "experience of the League." linking the two disciplines in its equivocal reference both to social order and institutional life.

\textsuperscript{49} For several perspectives on how international organization only "works" with the consent of the Great Powers, see S. Bailey, Voting in the Security Council (1969); K. J. Holsti, supra note 26, at 79-81; A.J. P. Taylor, supra note 20, at 45-50. This "experience of the League" is seen by many to have laid the groundwork for the success of the United Nations:

The organisation and scope of the United Nations' political activities were based on what were perceived to be both the strong points and shortcomings of League on what were perceived to be both the strong points and shortcomings of League experience, and were cast in the same mould. The necessity for inter-state co-operation led to new international organisation was a basic characteristic operation to power the new international organisation was a basic characteristic

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World War is thought to have progressed beyond the inter-War Permanent Court of International Justice ("PCIJ") in its jurisdictional innovations and integration into the United Nations structure, it is still thought of as the PCIJ's successor. The PCIJ, by contrast, is thought to be related to the Hague system, but neither to have replaced nor succeeded it.

To remain comprehensively ordered is a difficult assignment. Often in international society, war has been the instrument of comprehensive order and peace has been associated with the fragmentation of unimpeded sovereign autonomy. The League is often portrayed as a practice of perpetual resistance to violence and disintegration. In such portrayals, violence and fragmentation are externalized either by projection onto actors beyond the membrane of social life (such as the "terrorist" or "aggressor") or by confinement to moments of sys-

inherited from the League. In most respects, indeed, the United Nations was the recognisable offspring of League experience.

R. Hentig, supra note 14, at 161. See also D.W. Bowett, supra note 1, at 336-39 (dissolution of the League and problems of United Nations succession); I. Klauke, supra note 8, at 223-27 (development of "pacific settlement approach" to peace culminated in United Nations charter); 2 F.P. Walters, supra note 10, at 812 ("The United Nations bears at every point the mark of the experience of the League.").

For an account of discussion as to whether the court should begin anew or continue where the PCIJ left off, see L. Doliwetz, The United Nations—A Handbook on the New World Organization 79 (1946) ("The solution was finally reached of building the new International Court of Justice on the foundations of the old Permanent Court of International Justice."); see also 1 F.P. Walters, supra note 10, at 170-71 ("The new International Court set up by the United Nations is almost an exact reproduction of the Permanent Court set up by the League.").

Like the Court of Arbitral Justice proposed at The Hague in 1907, the new court is not intended to replace the Permanent Court of Arbitration. . . . No attempt has been made to circumscribe the usefulness of the work of the Hague Conferences. The Permanent Court of Arbitration may still have some functions to perform, even though the new Court being is its work immediately. . . .

The differences are very marked between the old Hague Court of Arbitration and the new Court of Justice. Being only a panel, of course the members of the former never met as a body; the judges of the latter will come together at least once a year.

M. Hudson, The Permanent Court of International Justice—And the Question of American Participation 10-11 (1925); see also A. Fachiini, The Permanent Court of International Justice 4-7 (2d ed. 1932) (discussing how the new court is related to the old court).

Terrorism is viewed as violent, disruptive, sporadic, the very antithesis of order and stability.

If symbolic violence appertains to the nineteenth century, sporadic or clandestine violence belongs to the twentieth. Clandestine violence—attacks in the shadows—is always sporadic; the sporadic violence of partisans is often committed out in the open. Terrorist networks in cities are clandestine. partisan forces are scattered, but they eventually wear uniforms and live openly in the djehils or maquis (underbrush). Some states not at war with each other fight, in peace-time, by means of terrorists and partisans.

R. Aron, supra note 26, at 60.
representation of the institution’s practice. Doing so often transforms the differences between the war and peace which establish the break and movement into institutions. Recast as “law” and “politics,” or “utopia” and “reality,” the exclusions against which the institution established itself can be managed within the institutional fabric. In the originating practices of the institution, the same difficulties are managed by a set of characterizations and exclusions of women and men, radicals and moderates, lawyers and politicians.

An important component, even precondition, for these more sophisticated narratives is a more integrated and continuous sense of the relationship between war and peace. Sometimes, for example, the First World War seems to epitomize the system of bombastic nineteenth-century nationalism. By juxtaposing a stalled trench trench life with hometown jingoism, the War symbolizes the worst of nineteenth-century statecraft—a rigid and decentralized political program of unchecked national passions. This view, 1919 brought a new order of organization, peace, and progress.

Sometimes, by contrast, the War is seen as the first experience of universal international cooperation, the first collective realization of an interdependence beyond nationally competitive imperialisms.

55 Albrecht-Carrié uses the “nineteenth century” to refer to the period from 1815 to 1914: “If we apply the label ‘nineteenth century’ to the hundred-year span enclosed between the dates 1815 and 1914, then the date 1870 may properly be taken as midpoint of the course of that century.” R. Albrecht-Carrié, supra note 21, at 145; see B.H.L. Hart, supra note 20; J.J. Saunders, supra note 26, at 161-71; B. Tuchman, The Guns of August (1962).

56 This view appears both in military histories of the War written in the 1930’s (which often exclude consideration of the peace settlement) and in diplomatic histories of the “Inter-War” period written after the Second World War (which often exclude consideration of the labor). E.g., International Relations, supra note 20; Crisis, supra note 20; C.R.M.F. Cruttwell, supra note 20; B.H.L. Hart, supra note 20; A. Wollers, Britain and France Between Two Wars (1966); see, e.g., G.M. Gathorne-Hardy, A Short History of International Affairs 1920-1939 (4th ed. 1950); J. Mackintosh, The Paths That Led to War—Europe 1919-1939 (1940); H. Macmillan, Winds of Change 1914-1939 (1946); Broken World, supra note 20.

57 Nicolson states that wartime necessities forced the allies to cooperate. This led to a realization that communication was essential to survival:

In the place of a national policy expressing itself by competitive and conflicting diplomacy, you had a common international interest imposing the need of international co-operation. Nor was this the only difference. Instead of national policy trying to impose itself from above upon the facts of a situation you had a system in which the facts imposed themselves upon a policy.

H. Nicolson, supra note 46, at 157. This approach is widespread in the international institutional literature. See, e.g., I. Claude, supra note 8, at 47.

The Great War was itself the final proof that the whole world had been brought within a single political system, for every people on the face of the earth was directly or indirectly involved in it—even the Lamas of Tibet and the Samoyedes of Kamchatka. Amid all its horrors, the war had this auguring and tremendous aspect, that it was the first event in human history in which all the peoples of the earth were not only involved, but knew that they were involved.

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Rather than focusing upon the First World War as the first “total” war (a distinction which literature of this type often awards the distinctly national American Civil War), this approach emphasizes that the First World War was, after all, the first world war.66 The sharp break was 1914, in which empires, power balances, war plans, Eurocentrism, and the false security of intertwined alliances collapsed.67 The League system merely ratified the new diplomatic real-

R. Muir, supra note 29, at 10; see also O. Newfang, supra note 29, at 146–51 (“co-operation by many nations is perfectly feasible”); Cotton & Morrow, The Machinery of International Cooperation During the Great War, in The League of Nations—The Principle and the Practice 50 (S. Duggan ed. 1919) (cooperation in systems of transport and supply necessary to allied War effort).

This small body [the Allied Maritime Transport Executive] was the hub of the Allied war-machine. From it went forth, daily and hourly, decisions that closely affected the interests, the needs and, above all, the daily habits of individuals over a large part of the world. And here too, under the impact of experience, were being hammered out conclusions as to the possibilities and limits of interstate cooperation which could have been arrived at in no other way. It was no accident that, when . . . the Secretariat of the League of Nations came to be formed, three out of the four members of the Transport Executive . . . transferred their experience and driving power to its service.

A. Zimmern, supra note 19, at 147.

68 Although H. Kissinger, supra note 34, at 105 n.1, writes that the American Civil War “approached the status of a total war precisely because it was a revolutionary struggle,” Euro-

war “approached the status of a total war precisely because it was a revolutionary struggle.” See, e.g., F. Pollock, supra note 10, at 88 (“[T]he Civil War was had been so [short] since the downfall of Napoleon, and the confusion of military experts was not shaken by the length of the American Civil War, which the de

vice is incapable of specifying.

stake the belligerents are incapable of specifying.

R. Aron, supra note 26, at 26; cf. G. Wright, The Ordeal of Total War 1939-1945 (1968)

(World War II as modern war).

59 The Great War itself was a conflict of massive forces in four dimensions—military, 

(World War II as modern war).
ity of broader participation (Latin American and Indian presence at the Paris Conference might be emphasized as an institutional symbol of the new reality), underscored the newly universal nature of peace, and created new boundaries. The First World War was the sine qua non of the international organization, and the U.K.-U.S. Allied Maritime Transport Council, Blockade Council, Revictualling Commission, and Supreme War Council were the progenitors of modern international organization.

Thinking of the War as the last gasp of the old system or the first breath of the new poses problems. Far from being the opposite of

and the Third World dawned in the Arab revolt and the conversion of the German colonies into mandates of the League of Nations. Monarchy as an institution of real authority received a death blow while democracy and socialism made giant advances.

B. Schmidt & H. Vedeler, supra note 20, at xv; see R. Albrecht-Carré, supra note 21, at 299-308 (post-War realignment of power); G. Craig, supra note 20; Twentieth Century, supra note 20; B.H.L. Hart, supra note 20, at 3 (“Fifty years were spent in the process of making Europe. Five days were enough to detonate it.”).

See G. Mangone, supra note 12, at 153 (“Not only were responsible ministers represented in the Council, but distant states, notably Brazil and Argentina, appointed special representatives to Geneva with ambassadorial status to sit with the Council instead of utilizing on a part-time basis one of their envoys to a European state.”); see also J. The Strategy of World Order 7. (R. Falk & S. Mendlovitz eds. 1966) (“The League represented the establishment of an international organization that was potentially universal; membership was open to all states, rather than limited exclusively to Western states.”). For various international perspectives, see J. Cortina, Cuba y la Liga de las Naciones (1928); W. Kelchne, Latin American Relations with the League of Nations 10-54 (1930); M. Perez-Guerrero, Les Relations des États de l'Amérique Latine avec la Société des Nations (1936); V. Ram & B. Sharma, India & the League of Nations 135-60 (1932); Hudson, Comment—The Argentine Republic and the League of Nations, 28 Am. J. Int'l L., 125 (1934).

On the universality of peace, see League of Nations Covenant art. 11, para. 1. For commentary, see F. Pollock, supra note 10, at 231. See generally W. Rappard, The Quest for Peace (1940) (asserting that the double task of the Peace Conference was to settle national claims and establish international order—the former achieved by essentially redrawing the map of Europe). But see G. Mangone, supra note 12, at 136 (asserting that the experiment in international administration was “an experiment clothed in idealism, fed by philanthropy, but put to sleep by political cupidity.”).

The conduct of the war had made a tangible contribution to the body of experience in creation and operation of multilateral agencies which was available to the founders of the League. Great Britain, France, and Italy, ultimately joined by the United States, had improvised an impressive network of joint bodies, including a Supreme War Council, a Revictualling Commission, an Allied Maritime Transport Council, and a Blockade Council. These agencies had proved invaluable in facilitating the complicated task of fighting together. They had seemed to prove that effective international cooperation could be achieved, without the necessity of creating an authoritative decision-making body to issue orders to national governments, by bringing together responsible officials of governments to get to know and trust each other, to confront the full and true facts of the situation together, and to harmonize their national policies on the basis of respect for the facts, and appreciation of the positions of the various governments.

I. Claude, supra note 8, at 47.

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violence, organization in some sense poses as its continuation.63 Rather than operating as a stasis against violence, institutional energy must be harnessed to do the work of war without violence, or to deploy violence on behalf of peace. Organization must produce change and reinforce the results of war rather than merely provide international social and institutional continuity across a violent gap.64 At first, it seems difficult to accommodate this continuous image of the relationship between war and peace with the radically discontinuous relationship initially invoked to suggest a break between the institutional regime, its predecessor regime, and the War which gave it birth. The new system must now present itself as a replacement and a continuation of war and the prewar order. Yet on reflection, this double demand is hardly novel. It seems the task set for any liberal political system—to provide ordered liberty.65

If a rather rigid sense of difference between war and peace was useful to create the break necessary to initiate the League system, these more continuous images are important in presenting the League as able to continue the struggle against tyranny and chaos. Both “war” and “peace” can now play the parts of order and freedom, organization and violence.66 Just as peace must provide both order and

63 Consequently, the League continues the old system of interaction between states. However this may be, the League of Nations was never intended to be, nor is it, a revolutionary organization. On the contrary, it accepts the world of states as it is and it finds it and merely seeks to provide a more satisfactory means for carrying on some of the business which these states transact between one another. It is not even revolutionary in the more limited sense of revolutionising the methods for even revolutionary in the more limited sense of revolutionising the methods for

64 The League is seen as providing the machinery for change, while at the same time rein-

65 See Crisis, supra note 20, at 19 n.1 (“The great strength of the Covenant”, said the Brit-

66 The treatment of international relations here presented is focused in terms of such broad conceptual principles. The first of these is the ever-present tension between the struggle for power and the struggle for order. Throughout the book, care is taken to emphasize that these two processes of international intercourse are always closely interrelated, that even every form of relationship, even war itself, in-
war to peace is seen as the capture of an unruly politics by law. Descriptions of this sort often treat the moment of institutional constitution as decisive. The Peace Conference provides an analogy for the historical transition from war to peace, for it moves from the adduction of political positions to signature of a treaty. Sometimes, by contrast, the literature treats the 1918 transition as a movement from law to politics. In this vision, emphasis is placed upon the movement from a written treaty which expressed the consequences of war in legal terms to the establishment of an institution which could provide the fluid forum of its revision and application. In this second approach, the institution promises a reawakened and peaceful politics.

These two characterizations might well be accommodated in a dynamic account of the League's establishment as the movement from politics to law and from law to politics. Such an account would spread the changes which took place in 1919 into a series of transitions. The agenda of the Peace Conference, for example, seems to

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64 Since the making of the Constitution of the United States there has been no undertaking of equal or greater importance than the drafting of the Covenant of the League of Nations in 1919, to be incorporated in the text of the Treaty of Versailles. By this Covenant there was brought into existence a formal association of nations to fulfill the dreams of prophets and seers for hundreds of years.

65 Butler, Introduction to D. Miller, The Drafting of the Covenant at viii (1928); see H. Dalton, supra note 67, at 117.

66 After stating that the Versailles Peace Conference in 1919 is a good place to start a history of the rise of international organizations, Archer writes: "The gathering at Versailles in 1919 was primarily an intergovernmental meeting of heads of state and government, foreign ministers and their advisers. It was mostly concerned with the question of international peace and security while economic and social questions were given only perfunctory consideration. The Conference was faced with the task of writing a peace treaty and organizing relations between states after the most momentous breakdown in interstate relationships in history—the First World War."

67 C. Archer, supra note 22, at 3.

68 The League was from the first something more than the moral and political beliefs which the Covenant professed; something more, also, than the great political and legal institutions which the Covenant established. Its purposes and its organs were combined into a living whole by the creative effort of human will.

1 F.P. Walters, supra note 10, at 1; cf. P. Poite, This World of Nations 290 (1929):

Two radically different views are held, by two different circles of students of the problem of government, concerning the nature of a Constitution. To some it is obvious—that the Constitution of a country consists of the fundamental social elements and political practises and principles which have historically come to make up the nation,—such is the British view of the Constitution. To others it is natural to think of the Constitution as a plan of government deliberately worked out in advance and adopted for application in the future, such is the American view and that of by far the majority of the peoples of the world today. The framers of the Covenant of the League of Nations, led by an American President, proceeded upon the American theory. Ever since the League was established it has been running under British leadership and on the British theory.
move from politics to law and then back to politics, with the moment of Treaty signature as the legal hinge between a politics debased and redeemed. By organizing itself as the movement first toward and then away from a legal text, the Peace Conference establishing the League seems able to break sharply with war and the old regime while continuing the fluid practice of politics.

Literature about the League has also used the relationship between law and politics to interpret the institution's historical practice of continued struggle against the forces of tyranny and chaos it was established to exclude. Early histories and commentaries on the League tended to treat the League as a politically accomplished fact which needed to be accommodated to the legal literature.  

Were 1918 thought the triumph of law over politics, we might expect legal scholars to have written about the mechanisms by which politics would be legally conducted. Indeed, later literature discussed the introduction of unanimity voting as a mechanism to accommodate the formal equality required by sovereign protocol to institutionalized decisionmaking—giving the insights of nineteenth-century international positivism institutional form. But legal writers did not take up the problem of voting until the early 1920's. Early writing about the League, perhaps most significantly beginning with one of Oppenheim’s last works, was predominantly concerned with the League’s international legal personality. These scholars sought to render a

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71 See F. Boeckel, The Turn Toward Peace (1930); League Problems, supra note 10; The Covenanter (1919).

72 Voting is a concept alien to the traditional system for the management of international relations, imported into this sphere as a result of the development of international organization. This importation is but one of several manifestations of the tendency of international agencies to promote the domestication of international relations—to bring about the progressive assimilation of international processes to those characteristics of national societies in their domestic political operations.

73 For an interesting early article, see J. Williams, supra note 12, at 1-5.

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political achievement in the language of law. Later works about the League, particularly histories written since the Second World War, have treated the League experience as a movement from a moment of law to politics. The League is thought to have begun with a resounding legal bang which sought, more or less successfully, to transform politics into law. The “failure” of the League is explained as the progressive capture or debasement of the legal institutional scheme by absent members, nonparticipants, intrusive ideologies and bad guys, and in part by reference to what are thought of as congenital flaws in legal powers, voting procedures, jurisdictions, and mandate.

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73 The object of the present article is to consider the League of Nations, not merely as it is established and defined by the Treaties of Peace, but as a living organism with a character formed partly by its origin and partly by life, and to attempt to determine in what class of legal phenomena that character places it.


76 Books that make this point include R. Albrecht-Carrié, supra note 21; C. Archer, supra note 22; J. Claude, supra note 8; B. Desser, The Years of Opportunity: The League of Nations, 1920-1926, at 51-81, 203-12 (1967); G. Mangone, supra note 12; B. Schmitz & H. Vedeler, supra note 20, G. Scott, The Rise and Fall of the League of Nations 369-98 (1973); cf. E. Bendiner, A Time for Angels—The Tragicomic History of the League of Nations (1975) ("The League's birth arose out of a series of political fantasies. The League idea withered and died when each nation remembered that its holy mission was to serve itself... "); A. Zimmermann, when each nation remembered that its holy mission was to serve itself."

77 In this view, the League is treated as having grappled with politics and emerged triumphant:

The greatest problems have been gradually brought into its machinery. It is superimposed on the old diplomatic system which it first sought to insulate it, but gradually, to its increasing attention, began to use it for its own purposes. This process has both increased the reality and revealed the limitations of the system. Statesmen of all countries have looked to it at moments of crisis, and public opinion has been enlightened and concentrated by the process of scientific inquiry and open discussion in a manner unknown at any other period of the world's history.

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74 See League Problems, supra note 10.
This ambivalence in the historical literature about the League suggests a dynamic process of reinterpretation in which the forward progress of the League is marked, for good or ill, in the language of law and politics. Just as the League's originating moment was understood as a dynamic motion from politics through law to a renewed politics, so the development of the League is understood as a struggle against the reemergence of that which had been banished.

As with the rhetoric of "law and politics," the literature about the League's establishment uses the language of "utopia and reality" in several ways to describe the changes which took place in 1918.\(^\text{79}\) Sometimes the establishment of the League is treated as a utopian moment, as a movement from the reality of the political and martial horror marked by the First World War to a saner world.\(^\text{80}\) However briefly, the League signals an appearance of our dreams in the world. Other times, by contrast, the move to establish the League, to give dreams concrete form, is treated as a moment of dashed hopes.\(^\text{81}\) The Peace Conference at which the League Covenant was drafted has come to symbolize the confrontation of utopian aspirations and political realities, and the transformation of the former by the latter into a legal triviality—the international institution.\(^\text{82}\)

These two characterizations are most often accommodated in a failure. G. Mangone, supra note 12, at 142 (failure of unanimity voting); Peacemaking 1919, supra note 18, at 189 (unanimity voting as fatally compromising); see generally G. Schwarzenberger, supra note 30, at 172-81 (inability of League to achieve even relative universality).

\(^\text{79}\) See International Relations, supra note 20, at 5 (describing the Treaty of Versailles as "founded on a substratum of genuine idealism" and the League as the maintainer of peace).

\(^\text{80}\) As G. Lower Dickinson phrases it, only the League can save us from the horrors of political reality: I am aware that to many readers the solution here suggested will seem Utopian. I do not know whether it be or no, for that depends upon the temper of nations and of their Governments. But I do know that, if this be Utopia, then Reality will be hell. For the alternative to a League of Nations is universal militarism, as outlined in the first chapter of this book.

G.L. Dickinson, The Choice Before Us 262 (1918); see C.E. Fayle, The Fourteenth Point (1919); J. Fisher, League or War? (1923); A. Sweetser, The League of Nations at Work 1-15 (1920).

\(^\text{81}\) E.g., Peacemaking 1919, supra note 18, at 187 ("We came to Paris confident that the new order was about to be established; we left it convulsed that the new order had merely fouled the old."); see D. Jerrold, They That Take the Sword—The Future of the League of Nations (1936); R.B. McCallum, Public Opinion and the Last Peace 4-12 (1944); V. Marguetitte, The League Fiasco (1920-1936) (N. MacFarlane trans. 1936); G. Slocombe, A Mirror to Geneva (1928).

\(^\text{82}\) Falk and Mendlovitz suggest that the League could not transform the utopian aspirations of its authors. 3 The Strategy of World Order, supra note 60, at 5 ("The League in practice, as distinct from the League in theory, proved unable to transform politics in international society.").

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83 See G. Scott, supra note 76, at 16 ("The Covenant was not a blueprint for Utopia; although it was certainly and consciously idealistic, it offered a framework for practical and effective cooperation between nations for their common good.").

84 See R. Albrecht-Carrée, supra note 21, at 362-71, 379-84; Peacemaking 1919, supra note 18; G. Scott, supra note 76, at 11-13.

85 Perhaps the best example of this is W. Kuhli, supra note 1.

86 It is true, of course, that the League of Nations concept had been widely discussed.

87 Without doubt many of these plans served to crystalize the ideas in the minds of the framers of the Covenant, and some of them probably supplied articles which found their way more or less directly into the draft conventions which served for the interchange of views among those later to be charged with the preparation of the Covenant.

C. Riches, The Unanimity Rule and the League of Nations 1-2 (1933); see C.K. Webster & S. Herbert, supra note 10, at 30 ("Meanwhile, the world had been full of schemes for a new international organization which should prevent the recurrence of the catastrophe under international cooperation which should prevent the recurrence of the catastrophe under international cooperation which should prevent the recurrence of the catastrophe under...""); see also A. Zimmern, supra note 19, at 160-73 (describing unofficial which it was suffering.").

British and American proposals for a worldwide league).\(^\text{83}\)

86 John Bigelow, writing in 1916, accuses the pacifists of being deluded utopians:

The signal failure of the pacifists to end war is due principally to their being under the guidance and influence of two classes of persons, of peace fanatics and of impossible foundation: the international lawyers, each building on an imaginary or impossible foundation: the international lawyers, each building on an imaginary or impossible foundation: the international lawyers, each building on an imaginary or impossible foundation: the international lawyers, each building on an imaginary or impossible foundation: the international lawyers, each building on an imaginary or impossible foundation: the international lawyers, each building on an imaginary or impossible foundation: the international lawyers, each building on an imaginary or impossible foundation: the international lawyers, each building on an imaginary or impossible foundation: the international lawyers, each building on an imaginary or impossible foundation: the international lawyers, each building on an imaginary or impossible foundation: the international lawyers, each building on an imaginary or impossible foundation: the international lawyers, each building on an imaginary or impossible foundation: the international lawyers, each building on an imaginary or impossible foundation: the international lawyers, each building on an imaginary or impossible foundation: the international lawyers, each building on an imaginary or impossible foundation: the international lawyers, each building on an imaginary or impossible foundation: the international lawyers, each building on an imaginary or impossible foundation: the international lawyers, each building on an imaginary or impossible foundation: the international lawyers, each building on an imaginary or impossible foundation: the international lawyers, each building on an imaginary or impossible foundation: the international lawyers, each building on an imaginary or impossible foundation: the international lawyers, each building on an imaginary or impossible foundation: the international lawyers, each building on an imaginary or impossible foundation: the international lawyers, each building on an imaginary or impossible foundation: the international lawyers, each building on an imaginary or impossible foundation: the international lawyers, each building on an imaginary or impossible foundation: the international lawyers, each building on an imaginary or impossible foundation: the international lawyers, each building on an imaginary or impossible foundation: the international lawyers, each building on an imaginary or impossible foundation: the international lawyers, each building on an imaginary or impossible foundation: the international lawyers, each building on an imaginary or impossible foundation: the international lawyers, each building on an imaginary or impossible foundation: the international lawyers, each building on an imaginary or impossible foundation: the international lawyers, each building on an imaginary or impossible foundation: the international lawyers, each building on an imaginary or impossible foundation: the international lawyers, each building on an imaginary or impossible foundation: the international lawyers, each building on an imaginary or impossible foundation: the international lawyers, each building on an imaginary or impossible foundation: the international
After referring to these people, however, the literature almost uniformly dismisses or ignores them. The League idea is located in earlier speculative works—by the Abbe de St. Pierre, Kant, and Rousseau, among others; a small pamphlet written in 1918 by General Smuts entitled The League of Nations: A Practical Suggestion is usually treated as exemplary of the plans for an institutionalized peace which gave flesh to Wilson’s fourteenth point; and most League histories narrate the transformation of a pre-War idea into practice by political realists such as Wilson, Smuts, Lord Cecil, House, and others.

Although this interpretation makes sense—Smuts was a powerful figure at the Conference and there is every reason to believe that his

field ed. 1973) (suggesting that the War split pacifist groups into pro-War and anti-War camps, resulting in the persecution of the latter and their subsequent harder-lined philosophy).

88 Pollock dismisses these people out of hand:
Now it is quite true that some pacifists were in belligerent and in neutral countries dreamt of a league after their own fashion which would disclaim coercive power and trust to organizing moral opinion. Incredible as it may seem that in 1916, 1917, and 1918 these people still believed that war could be done away with by showing “no more war” and framing pious resolutions, it is a fact we have witnessed.

F. Pollock, supra note 10, at 72. Walters, however, suggests that the unofficial plans influenced government leaders and led to the growth of official plans for the League:

The general public, however warmly it might have adopted the essential idea of the League, had neither the inclination nor the competence to form opinions on the details of its constitution. All such labours, therefore, could be effective only in so far as they influenced the decisions of those governments which were, in due course, to be responsible for writing the terms of peace.

1 F.P. Walters, supra note 10, at 22; see Cristi, supra note 20, at 7-13, 16-80. But see C.K. Webster & S. Herbert, supra note 10, at 30 (“So insistent was the pressure from below that the statesmen of the warring countries were gradually forced to take notice of it.”).

89 See, e.g., W. Kuehl, supra note 1, at 3-21.

90 See 1 F.P. Walters, supra note 10, at 27 (“Smuts’s work was from every point of view the climax of all the thought and labour expended on the League idea before the Paris Conference.”); C.K. Webster & S. Herbert, supra note 10, at 27 (commenting on Smuts’ pamphlet: “This great paper, expressed in cogent and moving language, immediately had a profound effect; it crystallized ideas and aspirations which had been held in many quarters, and made deep impression on both Lord Cecil and President Wilson”); see also C. Riches, supra note 86, at 7-10 (“the Smuts plan”); A. Zimmern, supra note 19, at 209-14 (same).

91 Webster and Herbert state that after listening to many unofficial schemes for the League, the men sat down and put practical bite in a theoretical idea:
On February began the meetings of the League of Nations Commission of which President Wilson was inevitably the leader, with Lord Cecil acting as his brilliant second and Colonel House and General Smuts in attendance ready to support their leaders. They had a draft prepared. With such a team and such preparation it was inevitable that the Covenant of the League should be mainly an Anglo-Saxon document.

C.K. Webster & S. Herbert, supra note 10, at 39; see also C. Riches, supra note 86, at 7 (Upon arrival in Europe, Wilson was confronted with drafts by Smuts and Cecil.); 1 F.P. Walters, supra note 10, at 32-38 (intensive consultation between American and British delegations in

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pamphlet was an important lobbying tool in Paris—it also raises difficulties. In fact, the Smuts plan differed dramatically from the League established by the Covenant, not least in the ambitious political role which it foresaw for the League. Other plans, particularly those published by the Fabian Society, were much more “realistic” in their predictions about what could and would be established at Paris. Moreover, other lobbyists dismissed by the literature were actually powerful and prestigious people who had been in contact with politicians at the Conference.

The persistence of this interpretation is suggestive. To a certain extent, of course, stressing Smuts’ overtly political plan in contrast to the more legalistic plans of the wartime agitators reinforces the League’s origin as a redemption of politics rather than as a political debasement of a legal ideal. It is the early (and largely enthusiastic) accounts of the League which seem particularly anxious to differentiate the “realistic” Smuts plan from those of wartime “utopians,” and to trace the League idea deep into the European philosophic tradition.

Seeking to demonstrate that the League is, or might become, a workable system, these raconteurs ground the League in sound political judgment, excluding at its origin those who might tarnish the institution’s image with utopian dreams. The establishment of the

refining the many plans into a single instrument), A. Zimmern, supra note 19, at 194-95 (synthesis of official and unofficial proposals forming the “Cecil draft”).

W. Kuehl, supra note 1, at 96-97, distinguishes the work of pre-War idealists from the realism of institution building.


94 This is true of most League histories written before 1930. See, e.g., R.B. Mowat, supra note 20, at v.

95 Irving Fisher, for example, although enthusiastic about the League, mentions only prominent male jurists and politicians such as Taft and Roosevelt among its ancestors. I. Fisher, supra note 80, at 3-14. Wilson is treated ambiguously by Fisher and other historians of this period. In some respects, America’s failure to join the League is seen as the fault of Wilson’s utopian idealism or his political ineptitude. In other respects, he is seen as the first to give utopian aspirations real form. Id. at 15-18; see P.J.N. Baker, The League of Nations at