League seemed a move from utopianism to pragmatic politics, from theory into practice because and to the extent it excluded utopians from the narration of its establishment.96 By contrast, histories of the League written in the late 1930's tend to differentiate the early League from the late League, seeing the League as successful until emasculated by power politics or the recalcitrant or absent member.97 For these historians, the utopian period did not end until the late 1920's. Although these authors tend not to differentiate the plans for a League from the League's early programs, seeing both as illustrative of a single utopian imagination, they are much less likely to dwell upon the "extremists" among the wartime pro-League agitators. Instead, they mention lawyers and philanthropists active in the Hague system before the War (Root, Carnegie, etc.) as well as the Paris Conference statesmen.98

Told this way, the early "successful" League, while utopian (and of legal inspiration), successfully excluded extreme ideologies, thus recapitulating the break forward from chaos and tyranny which sig-

96 William Rappard sees this as a movement from charter to actual workings, implying that while the plans may have been utopian, the League itself has moved into the realm of practical politics: The League of Nations, as a whole, is but the response to the needs of a war-sick humanity whose various national elements have become more and more conscious of their essential interdependence. Grouping they have set up an international institution for the discussion of their common interests, the chief of which is peace. This institution, like most other constitutional creations of history, has not developed along the lines of its fundamental charter, but has nevertheless tended by other, rather simpler processes towards its natural goal, the pacific organization of international relations. (Rappard, The League of Nations as an Historical Fact, in Division Intercourse & Education, Carnegie Endowment for Int'l Peace, Int'l Conciliation—Documents for the Year 279, 293 (1927).)

97 Most early historians suggest that the League failed because its members lacked the willpower to enforce its decisions: In the first place, it did not possess armed forces such as could enable it to impose its own decisions upon a recalcitrant member. In the second place, none of the member States made any sacrifice of their national sovereignty. But for these two defects (and they were fundamental) the League might well have achieved the pacification of the world.

H. Nicolson, Why Britain Is at War 156 (1939); see also 1 F.P. Walters, supra note 10, at 440-42 (failure of Preparatory Commission to agree upon limitations on rearmament of member nations). Schwarzenberger sees the failure of the League as a result of the absent or the non-member, specifically the United States, and later, Italy, Japan, and Germany. G. Schwarzenberger, supra note 30.

98 In 1934, Nicolson wrote that the League "is based upon a conception of international unselfishness which, were it a true conception, would render any league unnecessary." H. Nicolson, supra note 46, at 173. See C.K. Webster & S. Herberi, supra note 10; A. Zimmern, supra note 19, at 277-85.

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naled the League's birth. In the late 1930's, most accounts of the League located its downfall in the failure to remain vigilant against the intrusion of ideology and politics, a failure rooted in its utopian Wilsonian origin.99 League histories written after the Second World War extend this approach, generally condemning the entire League as a utopian failure. At the same time, however, they honor it as the source of utopian inspiration for the more "realistic" United Nations system.100

This continual historical relocation of the boundary between utopian aspiration and pragmatic realism, and the resulting ambivalence in the historical literature about the League's originators, suggests a dynamic process of reinterpretation in which the forward progress of the League is marked, for good or ill, in the language of utopia and reality. Just as the League's originating moment was understood as a

99 Unsurprisingly, these historians almost uniformly condemn Wilson as a utopian. Nicolson is exceedingly harsh in his treatment of Wilson. See Peacemaking 1919, supra note 18, at 195 ("The collapse of President Wilson at the Paris Peace Conference is one of the major defects of his own intelligence and character."). The League, however valuable it has been, and will be, as the clearing-house of international disagreements, could never have become, even had America adhered to its own principles, a super-state directing all international activity. Mr. Wilson, having surrend-

to it, a super-state directing all international activity. Mr. Wilson, having surren-

to it, a super-state directing all international activity. Mr. Wilson, having surren-
to it, a super-state directing all international activity. Mr. Wilson, having surren-
dynamic motion from the harsh reality of war through utopian planning to a renewed realism, so the development of the League is understood as a struggle against the reemergence of that which had been banished. What began as a break forward has become a practice of exclusion.

Unlike war and peace, the rhetorics of law and politics or idealism and realism seem to contrast idea and deed in various ways. By continually reinterpreting the break between war and peace in these terms, the move between them can be made to seem a transformation of thought, intention, or desire into practice. In this way, the move to institutions seems pragmatic and progressive. By repeating these characterizations as exclusions, the institutional regime is able to sustain its momentum by reference forward to the reappearance of the idea in its implementation.

D. Establishment by Association and Exclusion

These historical accounts, despite their diversity, were largely correct. A large number of people in the United States and the United Kingdom lobbied, rallied, wrote, and spoke for peace and for the institutionalization of international society before and during the First World War. Participation in the movement changed in the decades surrounding the Peace Conference, as did the plans for international organization which accompanied the peace movement. The League was established when the initiative passed from feminists and socialists to sensible politicians, and succeeded so long as it was able to exclude extreme ideologies from the arena of international institutions.

103 The American peace movement enjoyed a renaissance in the late 19th century, sparked by several prominent and successful international arbitrations. Great Britain and the United States resolved their Civil War differences in the Alabama Claims Settlement of 1872, the Institute for International Law was founded at Ghent in 1873, and by 1914, more than 200 lawyers and students of law, such as Elihu Root, James Brown Scott, William Howard Taft, Theodore Roosevelt, and Andrew Carnegie, who focused their attention on the Hague Conferences and the concomitant growth of public international law and arbitration. These pre-War leaders of the peace
movement shared much socially, politically, and culturally with those who would take up the project in 1919. They remained the most active proponents of a league before and during the War. Most were members of the east coast Republican foreign policy establishment. Influenced by the Hague experience, however, the approach of these pre-War jurists differed from that of both wartime peace activists and post-War politicians. Unlike the pacifists and social reformers, their early plans emphasized world peace under law rather than political reform. Unlike the political architects of the League, they

Peace Union—grew in strength, if not influence; and they were supplemented by new organizations with permanent endowments: the World Peace Foundation (1910), handsomely provided for by publisher Edwin Ginn, and the Carnegie Endowment for International Peace (1910) and the Church Peace Union (1914), both endowed by Andrew Carnegie.

Id. For the writings of these men, see 1-2 P. Jessup, supra; 1-2 Correspondence, supra. For the writings of other prominent peace leaders, see H. Lodge & A.L. Lowell, The Lodge-Lowell Debate—On the Proposed League of Nations (1919).

104 Their vehicle was the League to Enforce Peace ("L.E.P."), formed in the summer of 1915 to promote the idea of a post-war international league which would enforce peace.

105 K. Luntzker, supra note 101, at 351-55, suggests that these men shared many characteristics of the social strata within which they moved. An important element in the League to Enforce race and its values, including Fisher of Yale University, and David Starr Jordan, President of Harvard University. See H. Yeomans, Abbott Lawrence Lowell 1856-1943 (1965).

106 M. Luntzker, supra note 101, at 108-109; Luntzker, supra note 101, at 351-55; 1915, to promote the idea of a post-war international league which would enforce peace.


108 Quite apart from the statistics of cases actually heard or pending, it is impossible to estimate the effect produced by the existence of this court, for the appeal may be made always leads to the settlement of far more controversies than are brought to judgment. Nor can we estimate the value of having this system a part of the common stock of knowledge of civilized men, so that, when an international controversy arises, the first reaction is, not to consider war but to consider peaceful litigation.

109 This plan and its provisions, see supra note 7. See also F. Hicks, The New World Order 76 (1920) (an international legislature will fill in the judicial gaps for the international judiciary).

110 Root, supra note 101, at 43-45; cf. W. Kuehl, supra note 102, at 72 (parliament as an international congress through which peace could enter the world by vote).

The world is not ready for a Parliament of men, and it cannot be made ready except by the practical surrender of the independence of nations, which lies at the basis of . . . the civilized world. . . . Human nature must have come much nearer to perfection than it is now, or will be in many generations, to exclude from such a Parliament prejudice, selfishness, ambition and injustice. An attempt to prevent war in this way would breed war, for it would destroy local self-government and drive nations to war for liberty.

Root, Nobel Peace Prize Address 1914, Addresses on International Subjects by Elihu Root...
were quite comprehensive, proposing international authorities which would resolve disputes in the context of an internationalized community possessing higher norms. Although not generally formulated to "outlaw" war, it was clear that these plans sought to eliminate war as a means for settling international disputes.

With the outbreak of war in 1914, the establishment peace movement either pulled back from active pacifism or supported the Allied cause. Taft, Root, Filene, Lowell, and their associates continued to

130 (R. Scott & J. Brown eds. 1916), reprinted in the Eagle and the Dove, supra note 108, at 213. Peace is to be obtained instead by "the development and understanding of international law and the habit of submitting international controversies to judicial decision." Id. at 223. See supra note 107. Lowell, like many of the early planners, envisaged disputes being resolved under the aegis of international law. See 2 T. Marburg, supra note 30, at 12 ("The central idea of the project is that wars are the result of the condition of international anarchy out of which the world has never yet risen, that they will not cease until justice prevails, and that justice cannot triumph until the world organizes for justice."). For a comparison with later plans, see infra notes 137-42 and accompanying text.

131 Perhaps Norman Angell comes closest to the notion that war will be outlawed with his suggestion that a nation which engages in aggression be outlawed: "The outlaw nation could neither receive from nor send to the outside world material or communication of any kind—neither food nor raw material of manufacture, nor letters, nor cables." Angell, Economic Coercion, in Enduring Peace, supra note 92, at 184, 185; see infra notes 240-57 and accompanying text. Wars were still possible, but only as instruments of international justice. League members would be bound to wage a punitive war against nations that did not abide by international judicial decisions. Aggressor states were to be punished by armed intervention. See C. DeBenedetti, supra note 1, at 5; S. Herman, supra note 101, at 55-61; W. Short, supra note 104, at 3, 31-32.

Conventional attempts to outlaw unilateral aggression are to be distinguished from later liberal attempts to outlaw war—even "just" war—altogether. See C. DeBenedetti, supra note 101, at 64, 58-68. The Outlawry of War movement, for example, decided by the end of 1922 to dismiss any hint of enforcement from their plans. Salmon Levinson, the major figure in the Outlawry of War movement said of the war systems: "[Y]ou cannot control it, you cannot regiment war, you cannot do anything with it, therefore, you have got to outlaw it." Letter from Salmon Levinson to Raymond Robins (Dec. 28, 1922), quoted in C. DeBenedetti, supra note 101, at 64, 79 n.45; see J. Stoner, S.O. Levinson and the Pact of Paris—A Study in the Techniques of Influence (1943); J. Vinson, William E. Borah and the Outlawry of War 66-73 (1937).

Then, in August 1914, a shot fired in Sarajevo cracked the dike of complacency. War engulfed much of the world, peace movements and all. American leaders reacted predictably at first, expressing shock and abhorrence. But in the aftermath of peace advocates of all classes came to the defence of one warring power or another, the established peace societies wavered or (like the Carnegie Endowment) actually supported the Allied cause. Chatfield, Introduction to Peace Movements in America, supra note 87, at xiv. Marburg, a leading peace advocate, became a bombastic nationalist upon the advent of War. See 2 T. Marburg, supra note 30, at 56 ("[t]horough, overwhelming, disasterous defeat of Germany, resulting in a chastened Germany, is the only hope for the world"). Furthermore, "[t]o crush Prussianism is therefore essential if we are to have peace under a league or under any international institutions whatsoever." Id. at 93.

Most of the pre-War leaders of the peace movement had never advocated outright pacifism, but rather, the peaceful resolution of disputes, backed by a coalition of civilized nations. See M. Curti, Peace or War—The American Struggle 1636-1936, at 134-35, 170-71 (1936); C.
utterly rejected the political compromises of Wilson's League. It was perhaps to be expected that their peace plans would have little in common with something so practical and politically feasible as a Wilsonian League of Nations. As it turned out, however, even conservative Republicans, despite the similarities between the League Covenant and the proposals of the League to Enforce Peace, hesitated to commit Americans to the European settlement.

After Wilson broke diplomatic relations with Germany in 1917 and the United States entered the War, the ranks of the peace movement shrank even further. Although some women joined antimilitarists and pacifist intellectuals, only Jane Addams seemed interested in a post-War league. Although League histories often give women credit for inspiring the League, American pacifist, social-

115 Even most liberals rejected Wilson's Covenant. They particularly objected to an American commitment (as required by article 10) to overseas military action to preserve the inequitable post-War boundaries established by the Versailles Treaty. See C. DeBenedetti, supra note 101, at 15. To socialists and progressive post-War pacifists, social justice was the sine qua non of any lasting peace. Id. at 106-13.

116 See C. DeBenedetti, supra note 101, at 22; S. Herman, supra note 101, at 47-51. [No] agreement in the way of a league of peace or under whatever name should be contemplated which will probably not be kept when the time comes for acting under it. . . . I think that observation applies to making a hard and fast agreement to go to war upon the happening of some future international event beyond the control of the United States.

2 P. Jessup, supra note 103, at 378 (quoting Letter from Edward House to Elihu Root (n.d.)); see also S. Herman, supra note 101, at 79-83 (tension between Wilsonians and conservatives over territorial guarantees).

117 In the United States the AUAM was led by prominent reformers who worked closely with Jane Addams and Lillian Wald: Crystal Eastman, an attorney and pioneer in labor relations and fair housing legislation; her brother, Max Eastman, the editor of an exuberant magazine of protest, The Masses; Oswald Garrison Villard, who owned and edited The Nation; and Paul Kellogg, the editor of Survey, an important journal which focused on social problems and was directed to social workers.


118 Most women supported the War as heartily as men:

I am just a plain English working woman, but I represent millions of women who face the present just war as much as do the men. One hundred and eighty women are said to be waiting at Tilbury to come to this congress to talk peace. For every one of these, a thousand English women are willing to accompany their sons and husbands to fight. We are tired of such century-old silly platitudes as are uttered here.

J. Bigelow, supra note 87, at 61-62 (quoting Anonymous speaker at Hague Conference). Even Jane Addams' interest in an international league lapsed with the outbreak of the World War: On the other hand, quite as an artist in an artillery corps commanded to fire upon a beautiful building like the duomo at Florence would be deterred by a compunction unknown to the man who had never given himself to creating beauty and did not know the intimate cost of it, so women, who have brought men into the world and nurtured them until they reach the age for fighting, must experience a peculiar

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ist, and feminist support for the League only developed after it was already a lost cause in the United States. Liberals such as Kellogg, Beard, Chamberlain, and Dewey saw an international league as no more than the by-product or expression of a more thoroughgoing reform effort. The few peace plans put forward by these groups during the War differed in tone and emphasis from both those of the Republican peace establishment and those of the men who were to be responsible for building the League system at Paris and thereafter. Socialists, progressives, and liberal intellectuals wove their proposals for an international post-War system into a critique of the capital state which was quite different from what either Taft and Root or Wilson and Smuts had in mind. For them, the League was to

revelation when they see them destroyed, irrespective of the country in which these men may have been born.

Addams, Women and Internationalism, in Hague Women, supra note 102, at 124, 128. Addams concentrated instead on providing food for the starving victims of war and took no part in the L.E.P. See S. Herman, supra note 101, at 145-49; supra note 114.

The Women's International League for Peace and Freedom did not endorse the League of Nations concept until 1926, and then with reservations. Church peace leaders were even later converts. See C. DeBenedetti, supra note 101, at 174.

119 The U.S. section of the Women's International League for Peace and Freedom was not established until 1919. See supra note 114.

120 Paul Underwood Kellogg was cofounder with Lillian Wald, Jane Addams, Oswald Garrison Villard, and others of the American Union Against Militarism (1915)—on these peace leaders, see supra note 101—and helped organize the League of Free Nations Association, see supra note 107, to inject the liberal notions of equal economic opportunity and self-determination into the pro-League agenda, see C. Chambers, Paul U. Kellogg and the Survey—Voices for Social Welfare and Social Justice (1971); Chambers, Kellogg, in Peace Leaders, supra note 101, at 499.

Charles Austin Beard, professor of politics at Columbia University, on the basis of his economic interpretation of history—see 1-2 C. Beard & M. Beard, The Rise of American Civilization (4th ed. 1927)—saw social reform as the road to lasting peace. See Charles A. Beard (H. Beale ed. 1954); T. Kennedy, Charles A. Beard and American Foreign Policy (1975); Letter from Charles Beard to Raymond B. Fosdick (May 20, 1922), quoted in C. DeBenedetti, supra note 101, at 36, 43 n.62 ("The social engineer is the fellow. The old talk about sovereignty [and] rights of man . . . is pure bunk. It will not run trains or weave cloth or hold society together.")


John Dewey was also a Columbia professor. He opposed the League of Nations as "a league of governments pure and simple," and sought to replace it by outlawing war. See J. Dewey, Outlawry of War: What It Is and Is Not (1923); C. Howlett, supra note 107; Howlett, Dewey, in Peace Leaders, supra note 101, at 212.

121 See E. Balch, supra note 102, at 51 ("The Socialist diagnosis of the causes of modern war may thus be summed up in one sentence: The basic cause is capitalism; the contributory causes are imperialism, militarism, social unrest, international grudges, and pseudo-patriotism.") (quoting Socialist Morris Hillquit). Or, as the Socialist Standard writes:
achieve peace by expressing international social reform, self-determination, and free trade.

Women also tended to see the War as a continuation of the old system of peace, as reason and calculation run amok. The internationalism they advocated consequently differed from both the legitimation of the pre-War planners and the political settlement envisioned by the architects of the League. Where pre-War peace activists had relied on law to confront war, these writers emphasized popular moral opprobrium mobilized through international democratic reform. The decade following the outbreak of War thus saw public advocacy of the League shift from conservative establishment lawyers to radical feminists, and from Republicans to Progressives and liberals. In the same period, the proposals for a new world order shifted from the institutionalization of legal arbitration to international social and moral reform.

Wilson appears to have lost touch with the peace movement early in the War. In announcing American war aims, however, he included a proposal that "a general association of nations must be well, is doubtless one manifestation of this change, and the so-called radical or progressive element in each nation, whether they like it or not, recognize it as such."

Id. at 136.

Does the common man distrust the League because it is slow to relieve the widespread misery in Europe; because it so cautiously refuses to become the tentatively logical and moral instrument of a longed for new era; because it threatens to become one more of those abortive efforts "to end war" which fail because they have nothing tangible and human upon which to focus scattered moral energies and no popular drive with which to make effective moral ideas upon a more extended scale than that to which the time has become accustomed?

...The remedy is for the WORKING CLASS to take over the whole of the means of production and distribution, in order that what they may produce may belong to them. They will then have control of the product of their hands and brains, and will use it for its logical purpose—to satisfy the needs of those who produce it.


122 The piling up of armaments was seen by many women as a very organized type of madness:

Just because they knew that under the present conditions of anarchy between national treaties would be considered mere scraps of paper, they have tried to do away with anarchy by organizing, by perfecting a peace-technique in preference to—or at least parallel with—war-technique.

...[T]he excellent preparation for war made an organization for peace unnecessary—in the opinion of the leaders.

E. Key, supra note 25, at 20-23. The disarmament movement was the particular preserve of women and church leaders. See C. DeBenedetti, supra note 101, at 85-87. Emma Wold founded the Women's Committee on World Disarmament in 1921. See Mitchell, Wold, in Internationalists, supra note 101, at 791.

123 Jane Addams' internationalism rejects the strict rationality of other appeals for world organization:

Reason is only a part of the human endowment; emotion and deep-set racial impulses must be utilized as well—those primitive human urges to foster life and to protect the helpless, of which women were the earliest custodians, and even the social andgregarious instincts that we share with the animals themselves. These universal desires must be given opportunities to expand and to have a recognized place in the formal organization of international relations which, up to this moment, have rested so exclusively upon purely legal foundations in spite of the fact that international law is comparatively undeveloped.

Addams, Women and Internationalism, in Hague Women, supra note 102, at 124, 129-30. Internationalism, as Addams sees it, is just one of many fundamental changes occurring at this time:

The recent entrance of women into citizenship coming on so rapidly not only in the nations of Europe and America, but discernible in certain Asiatic nations as
formed under specific covenants for the purpose of affording mutual guarantees of political independence and territorial integrity to great and small states alike." Taft and his League to Enforce Peace seem to have been the major source of inspiration for Wilson's inclusion of a league among his fourteen War aims. Thereafter, and in the closing period of the War, advocacy of an international organization passed from the peace movement to those who were planning the peace. Although this group included conservative lawyers and others associated with the pre-War efforts (among them Filene, Lowell, and Root), the initiative seems to have passed to a group of young, liberal lawyers, including James T. Shotwell, Manley O. Hudson, Raymond B. Fosdick, and David Miller.

Like the liberal intellectuals associated with the League of Free Nations Association (including Kellogg, Beard, Chamberlain, and in two camps—capitalist nations against socialist nations. It is class conflict alone that will hold the League together.".

127 All of Wilson's fourteen points can be found in W. Wilson, Address to Congress, Stating the War Aims and Peace Terms of the United States (Jan. 8, 1919), in President Wilson's State Papers and Addresses 464, 468-70 (A. Shaw ed. 1918).

128 The direct influence for Wilson's fourteenth point is seen by many to have been the L.E.P. led by ex-President Taft:

The program of the League to Enforce Peace influenced the British advocates of a league of nations and later helped to form the basis of official discussion in the framing of the Covenant.

129 President Wilson was not at first actively interested in the program of the League to Enforce Peace, but came out strongly in favor of it on May 27, 1916.

J. Knudson, supra note 67, at 24-25; see W. Wilson, Address Before the League to Enforce Peace (May 27, 1916), in President Wilson's State Papers and Addresses, supra note 127, at 271.

130 C. DeBenedetti, supra note 101, at 25-26; C. DeBenedetti, Peace, supra note 103, at 100. For pacifist objections to the League, see supra note 115.


Dewey), these young men saw the League as an opportunity for international social reform. They did not share enthusiasm for a renewed Hague system, nor did they share with the League to Enforce Peace conservatives a desire to institutionalize an international deterrent force. These were the men, together with Harold Nicolson, who would experience the Paris Conference as a loss of innocence. Progressive in spirit, these democrats were cut off from the social movements which had agitation for pacifism and social reform during the War, and sought to use the Paris Conference as an opportunity to enforce self-determination for Eastern Europe. During this period, socialists and feminists came to oppose any post-War League which would institutionalize the Versailles settlements.

As the progressive initiative moved closer to power, the decisive political decisions about the League were made by a group of politicians (Smuts, House, and Root, among others) who did not share the progressive sentiments of these young lawyers. These were the men who held the balance of power at Paris. Despite their connections to the pre-War jurists and philanthropists, their plans for a League were...
The plans produced by Wilson's men hardly mentioned the judiciary. Instead, they typically emphasized the role of a parliamentary plenary in international dispute resolution, relying on law only to create the conditions within which such a political solution could be secured. If they drew on the notions of pre-War League enthusiasts, they extended the idea of arbitration politically rather than legally. More often, they denied any interest in resurrecting the Hague system. They sought rather to universalize the nineteenth-century system of interlocking treaties of security, grounding the international institution in national sovereign interest and prerogative.

136 For example, it was Root's support of Lodge's reservations that swung Taft and the L.E.P. away from Wilson's League, and doomed the unadulterated League to failure. See C. DeBenedetti, supra note 101, at 22, 50, S. Herman, supra note 101, at 48-49.
137 Later plans can be found in 2 D. Miller, supra note 68. Some of them are: the Philimore plan, id. at 3; Colonel House's draft, id. at 7; Wilson's first draft, id. at 12; the Smuts plan, id. at 23; the Cecil plan, id. at 61; Hurst's revision, id. at 142; the Hurst-Miller text, id. at 638. While some of these plans provide for a judiciary, such provisions are given a secondary place in the drafts, usually following provisions recognizing the territorial integrity and political independence of signatories and the construction of the League itself. The Philimore plan does not propose a court of justice and does not make arbitration obligatory. 2 D. Miller, supra note 68, at 10. The House plan, which Wilson commissioned, made arbitration obligatory. In a transmittal letter accompanying the draft, House states that the International Court "might well prove the strongest part of" the League. 1 id. at 13.
138 With the emphasis on dispute resolution by the Council or the delegates, see infra note 139, law is subsumed by politics. Rather than applying law to resolve disputes as would a court, later plans used legal apparatus to construct dispute-resolution proceedings, but expected those proceedings to be resolved in the political arena.
139 For these plans, see supra note 137. Article III of the Cecil-Miller draft, for example, gives much more emphasis to the executive council:
The Executive Council may appoint joint committees, chosen from the body of Delegates or consisting of specially qualified persons outside of that body, for the study and systematic consideration of the international questions with which the Council may have to deal, or of questions likely to lead to international complications or disputes.
132 2 D. Miller, supra note 68, at 132-33.
Disputes can be resolved by either arbitration or by submitting questions to the Council or the Body of Delegates, which now resembles a debating forum:
The Contracting Powers jointly and severally agree that should disputes or difficulties arise between or among them which cannot be satisfactorily settled or adjusted by the ordinary processes of diplomacy, they will in no case resort to armed force without previously submitting the questions and matters involved either to arbitration or to inquiry by the Executive Council or the Body of Delegates or until three months after the award by the arbitrators or a decision recommendation by the Executive Council . . . .
Id. at 135 (emphasis in original).
140 The language of Wilson's fourteenth point—"mutual guarantees of political independence and territorial integrity to great and small states alike," W. Wilson, Fourteen Points
ing to support what became Wilson’s League, lost enthusiasm after much internal wrangling about the Covenant’s provisions for automatic sanctions against aggression and universal guarantee of the geopolitical status quo. Progressives and feminists distanced themselves more fully from the League movement. Wilson’s attempts to ratify the Covenant collapsed when the Republican establishment, led by Root and Lodge, joined utopians and socialists in turning against the League.

Interestingly, however, a second wave of international enthusiasm began to build as the League Covenant was being defeated in the Senate. A new group of women, veterans of the successful suffrage campaign and somewhat distanced from the wartime pacifists (Carrie Chapman Catt, an important leader of this movement, had actually supported the American war effort) began to agitate for peace. Some of this energy was harnessed to the pro-League movement, but much of it went instead into plans for disarmament and the outlawry of war. At the same time, lawyers associated with the League effort, including Hudson and Miller, turned their attention to the establishment of a World Court—rehabilitating proposals originally associated with the Hague, brushed aside at Paris, but perhaps realiz-

144 The Covenant was “drawn according to old-fashioned diplomatic formulae and was deficient in economic feeling.” Letter from James G. McDonald to Salmon Levinson (June 9, 1919), quoted in C. De Benedetti, supra note 101, at 19, 40 n.42; id. at 201. Raymond Fosdick, who served with the American delegation at Versailles, conceded that the Treaty was illegal “from every standpoint, and there [could] be no hope of permanent peace under its auspices.” Letter from Raymond Fosdick to Manley O. Hudson (July 14, 1919), quoted in id. at 110-11, 216 n.1. John Dewey saw the League as a product of “old world politics.” Howlett, John Dewey and the Crusade to Outlaw War, 138 World Affs. 336, 341 (1976). Pacifists were even more outspoken about the League as an unholly alliance of victor states. Oswald Garrison Villard, grandson of the abolitionist, and Editor of The Nation, called it a “covenant with death.” See D.J. Humen, Oswald Garrison Villard, Liberal of the 1920’s (1960); M. Wrezzin, Oswald Garrison Villard—Pacifist at War (1965); Thernstrom, Oswald Garrison Villard and the Politics of Pacifism, 14 Harv. Libr. Bull. 126 (1960); Wrezzin, Villard, in Peace Leaders, supra note 101, at 991, 992. John Hayes Holmes, a founder of both the NAACP and the American Civil Liberties Union, characterized the Versailles Treaty as an unjust instrument of Great Power imperialism. See De Benedetti, Holmes, in Peace Leaders, supra note 101, at 422.

145 Thomas Lamont and Bernard Baruch financed the new women’s peace committees on the theory that the organization that won the suffrage battle could be successfully redirected at a new target. See C. De Benedetti, supra note 101, at 25. On Carrie Chapman Catt, see supra notes 102 & 114.

146 Emma Wold, lawyer and women’s suffrage activist, founded the Women’s Committee on World Disarmament in 1921. Her committee sought an international conference on disarmament as a step toward the abolition of war. See C. De Benedetti, supra note 101, at 86; M. Peck, supra note 112; Mitchell, Wold, in Internationalists, supra note 101, at 79; Why Wars Must Cease (1935). The Outlawry of War movement, see supra note 111, was the major pacifist enthusiasm between the wars. It did much to undermine the League of Nations’ ratification and the movement for the United States’ recognition of the Hague Court, since neither institution actually outlawed war. See C. De Benedetti, supra note 101, at 59-71.

147 Both before and after the War, the major enthusiasm for the World Court was Root, who helped frame its statute. C. De Benedetti, supra note 101, at 47-54; C. De Benedetti, Peace, supra note 103, at 81-87; S. Herman, supra note 101, at 22-34; see Leopold, Root, in Internationalists, supra note 101, at 634-35; supra note 103. Hudson, Miller, and Wilson’s lawyers turned to the World Court after the League had failed in the U.S. Senate, hoping it would be a first step to League ratification. See C. De Benedetti, Peace, supra note 103, at 113-14; M. Hudson, supra note 52; M. Hudson, The Permanent Court of International Justice 1920-1942—A Treatise (1943); M. Hudson, The World Court 1921-1931—A Handbook of the Permanent Court of International Justice (3d ed. 1931).

148 For example, The Women’s Pro-League Council was initially funded by Lamont and Baruch. On Baruch, Lamont, Addams, Catt, et al., see supra note 114.

149 The Kellogg-Briand pact was largely orchestrated by Shotwell, see supra note 130. The World Court was approved by the U.S. Senate with only five reservations in 1917, see C. De Benedetti, Peace, supra note 103, at 117, but was rejected under a democratic presidency in 1935, id. at 129. See C. De Benedetti, supra note 101, at 154-58; S. Herman, supra note 101, at 53; Leopold, Root, in Internationalists, supra note 101, at 634, 636.

150 An interesting example of this process is provided by the movement for a “federation” of democracies founded immediately prior to the Second World War by New York Times correspondent Clarence Streit. His utopian vision was by-passed by the United Nations movement, and the original group, in turn, was absorbed by a shill cold war group during the McCarthy period. This original group, in turn, was absorbed by a shill cold war group during the McCarthy period. This original group, in turn, was absorbed by a shill cold war group during the McCarthy period.
process of adjustment from the harsh legal terms of the Versailles settlement, so those at the Conference could situate their political sagacity forward of the pre-War fascination for arbitration and law. These pre-War dreams had been tempered by the War and could be redeemed by politicians like Smuts, Wilson, and House. On the other hand, just as the historians could set the League against the intrusion of dangerous ideologies, so those who would put the peace together could be clearly distinguished from the various fanatics, be they religious objectors or socialist agitators, who had opposed the War.\(^{121}\)

The efforts of both historians and Paris politicians were ennobled by the torch of peace preserved during the War by women, upon whose enthusiasm these men could now rely and whose participation they could displac.\(^{122}\) In 1919, the architects of the peace were able to feel they were riding the wave of coherent and progressive history. Even

\(^{121}\) In fact, David Miller refers only to the plans of Smuts, Cecil, Phillimore, et al. I-2 D. Miller, supra note 68. He never refers to the “fringe” elements. Oppenheim refers to all the plans prior to the League (and certain aspects of the Concert of Europe and the Hague Conferences) as utopian. Since Grotius, “many other schemes of similar kind have made their appearance, the enumeration and discussion of which is outside our present purpose. So much is certain that all these schemes were Utopian.” L. Oppenheim, First Lecture—The Aims of the League of Nations, in League Problems, supra note 10, at 9.

\(^{122}\) Zimmer “thanks” Jane Addams for her noble vision while distinguishing the practical work done by statesmen and diplomats:

Men like M. Romain Rolland and women like Miss Jane Addams are the salt of the earth; if everybody were like Miss Addams the evil manifestations of internationalism would disappear for want of a public, and world-government itself—the inter-State problem—would be greatly simplified. . . . All power to their elbow! Only let us whisper one caution in their ear as they go on their errand of mercy—

the famous caution of George Washington: “Influence is not government.” However good and reasonable you may make people, there still remains over, for all of us who are not theoretical anarchists, the technical political question of the adjustment of the relations between the different Sovereign States.

A. Zimmer, supra note 30, at 38. Pollock does not specifically refer to women, but to all the “fringe” pre-League plans.

Some of these plans, aiming at a complete federal constitution with a supernational government, were altogether extravagant; one or two of their authors offered a complete new code of international law made ready. Others of more moderate ambition were overweighted by an excess of premature detail; nevertheless the ventilation of the subject was useful and many of the suggestions profitable.

F. Pollock, supra note 10, at 70. The first practical movement, he claims, was the foundation of the American League to Enforce Peace. Id. Justice Brewer, writing before the War, enforces the women’s peace movement:

Among the great forces in our civilization working for peace, more potent here in America than elsewhere in the world, is woman. . . . Nowhere in the world is the so potent a force in public life as in this country, and you may be sure that that force will be enlarged in steadfast opposition to war and in favor of the settlement of international disputes by arbitration.

Address by Justice David Brewer, supra note 115.

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as historians reevaluated their self-image, they retained the narrative structure animating their enthusiasm.

This narrative poses some difficulties. As the various reinterpretations provided in League histories indicate, those who seemed pragmatic politicians came to seem wildly out of touch with political realities only a few months after the Treaty of Versailles was signed. Although this narrative was grounded in real differences among the peace plans and social status of the various participants, it seems to exaggerate those differences, particularly as defined by the boundaries of law and politics or of pragmatic reason and utopian desire. The differences among groups are by no means great enough to sustain the mythic exclusion of pre-War progenitors and wartime agitators from participation in the construction of and credit for the League itself.

To take only a few examples, Smuts plan was far more comprehensive and internationally ambitious than the proposals of most wartime socialists or women, despite its subtitle A Practical Suggestion.\(^{133}\) The proposals of the Fabians and of some female activists foreshadowed the details of political calculation which would go into the League Covenant more preciently than did Wilson, House, and Smuts put together.\(^{124}\) Indeed, Fabian “gas and water” internationalism was far more realistically small scale than Wilson’s grandiloquent rhetoric about a democratization of international politics. Jane Addams reads like a shrewd and able politician compared both to Lowell and Wilson.\(^{135}\) Finally, the plans of the most ardent political realist relied in myriad ways upon the fabric of public international law.

Strangely enough, the differences among groups and plans seem to have been heightened by the rhetoric of both participants and historians. Many participants seemed anxious to demonstrate the particularities of his or her proposals, and often did so by emphasizing their moral significance or practical wisdom.\(^{156}\) To take one example, Ber-

\(^{133}\) Smuts, at his most exuberant, saw the League inheriting the crushed European empires and becoming, itself, a type of surer nation. See J.C. Smuts, supra note 141, at 11 (“Europe is being liquidated, and the League of Nations must be the heir to this great estate.”).

\(^{124}\) The Fabians, for example, propose an international council which is very similar to the council adopted by the League: “The International Council shall be a continuously existing council composed of representatives of the Constituent States, to be deliberative and legislative body composed of representatives of the Constituent States, to be deliberative and legislative body composed of representatives of the Constituent States, to be deliberative and legislative body composed of representatives of the Constituent States, to be deliberative and legislative body composed of representatives of the Constituent States, to be delibera-

\(^{156}\) Shaw, Introduction to L.S. Woolf, International Government at xiv–xv (1916), writes:
nard Shaw situates his proposal for "organization" as opposed to "arbitration" in the following terms:

Besides these more definite schemes, there is a vast mass of opinion which can be compared only to that of the elder Weller in Pickwick. It will be remembered by good Dickensians that when the case of Bardell v. Pickwick was entered, Mr. Weller recommended Mr. Pickwick to plead an alibi; and when Mr. Pickwick lost his case, his humble counsellor uttered the famous lamentation, "Why won't there an alley-bi?" Substitute the word Arbitration for Alibi, and you have the state of mind of ninety-nine Pacifists out of every hundred now living. They know that a war between England and the United States over the Alabama was averted by arbitration, and they have ever since regarded arbitration as a simple and sufficient alternative to war. Since 1899 they have attached a peculiar sanctity to the soil of The Hague, owing to the establishment there of the Hague Conference as a permanent arbitrating body. But it is just this limitation of the Hague Conference to arbitration, and to quite unauthoritative attempts to codify and establish such rules of the ring as war admits of, that makes it practically negligible as a pacific agency.

The present volume will, it is hoped, help to clear away this benevolent vagueness and to explain what is needed as an alternative to war . . .

... It is the peculiar business of The Fabian Society to supply progressive aspirations with practical methods.137

Although the historical literature was not able to agree on the

"Let us therefore not deceive ourselves with good-natured dreams. Unless and until Europe is provided with a new organ for supernational action, provided with an effective police, all talk of making an end of war is mere waste of breath."

J. Addams, supra note 155, at 125, asserts that Wilson was directly influenced by the International Congress of Women at the Hague: "The congress at The Hague drew up resolutions which embodied many of the propositions afterwards included by President Wilson in his Fourteen Points."

Lucia Mead writes:

As, however, there are still many visionaries with facile pens, practical pacifists must patiently unravel the intellectual tangle in which vague definitions, half truths, guesses at history and ignorance of the new organic unity of economic interests have left many persons, despite their diplomas, degrees, and cleverness in mathematics, languages, and physics

L. Mead, Swords and Ploughshares—Or the Supplanting of the System of War by the System of Law 2 (1912).

Lodge asserts the need to make a "practical" assessment of the League:

The question before us, the only question of a practical nature, is whether the League that has been drafted by the Commission of the Peace Conference and laid before it will tend to secure the peace of the world as it stands, and whether it is just and fair to the United States of America.


137 Shaw, Introduction to L.S. Woolf, supra note 156, at xvi-xviii.

relative "utopianism" of various approaches to international organization, most scholars of international institutions follow Carr in treating the distinction between "realism" and "idealism" as the key organizing concept in their account of the League's establishment.138 For example, as the literature moved from approving to disapproving of the theory of "collective security," it did so in part by treating it first as a "realist" advance on the legalistic Hague and then as an example of typically "utopian" Wilsonian faith in legal covenant.139

By mobilizing the rhetoric of war and peace, law and politics, utopianism and realism, participants and historians have characterized the establishment of the international institutional regime as the crest of a progressive wave breaking forward from extremes which an institutionalized and redeemed international process must continually exclude. The architects of the new order both situated themselves at the cutting edge of a tradition and sought to continue and displace the

138 See Crisis, supra note 20.

The myth of collective security, as it evolved in the wartime league of nations movement, at the Peace Conference, and during the inter-war period, integrated and extended the fundamental themes and internationalist aspects of nineteenth century and pre-war liberalism — i.e. the belief in the essential harmony of interests and desire for cooperation underlying the relations of nation states and peoples (rightly organized and properly educated); the hopes for peace through the progressive extension of world political and legal structures; and the critique of the balance of power, the arms race, secrecy, and imperialism attributed to the old diplomacy. The myth was sometimes structured as an international analogue to the classic liberal myth of the social contract, with the League of Nations Covenant and its system of collective security ending the pre-war Hobbesian state of latent war or "international anarchy."

Id. at 98 (footnote omitted).

In more recent literature in the field, a reverse trend can be seen in the passing in and out of fashion of the "world peace through world law" movement. See G. Clark & L. Sohn, supra note 13. Claude critiques the Clark/Sohn scheme as being unrealistic:

The most impressive scheme for world federation yet developed, that fashioned by Grenville Clark and Louis B. Sohn, envisages individual citizenship of the global state but is permeated by the assumption that national states will collaborate or can be required to collaborate in making the federal system work . . .

However deeply one might wish that the world could be governed by policemen wielding night sticks, the realities are such that a valid concept of world government must define the problem as it has been defined by international organization: how to cope with a multiplicity of national states. Once this is accepted, it becomes evident that there is no magic in the formal supplantation of international organization by world government, but that proposed methods of managing a pluralistic society must be judged on their merits, rather than on the basis of their being labeled "organizational" or "governmental."

L. Claude, supra note 8, at 431-32.
work of earlier peace advocates.\(^\text{160}\) By contrast to wartime resisters and agitators, the institution builders styled their work a return to order from chaos and to reason from religious or ideological passion.\(^\text{161}\) Saner hands were again at the helm. At the same time, these men represented the worldly embodiment of a human ideal. The torch of idealism had been passed to an institutionalized generation, inheriting as it excluded the vision of women and wartime radicals.\(^\text{162}\)

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\(^\text{160}\) The movement to the L.E.P., for example, is seen—in this history of the League—as continuous with the old system but providing a link to the new League of Nations:

The movement, as had been noted, was not altogether new, as numerous peace organizations had been formed earlier. But this was unique in that definite plans were formulated for the creation of an organized international society not far different from that now attempted by the League and the World Court.

J. Knudson, supra note 67, at 24.

\(^\text{161}\) The National Peace and Arbitration Congress held in New York in 1907 is seen as a movement toward reason:

The work of the Congress here will not be directed by dreamers or idealists who have schemed out romantic and impracticable peace plans, but by statesmen, jurists, educators, publicists and hard-headed business men who have taken hold of the problem with the idea of solving it along lines which will be practical and which in the end shall present the same ideal the idealists expect to obtain by one rush.

N.Y. World, Apr. 14, 1907, at E1, col. 1. Later, movements such as these are seen as illusion, with the War acting as the break point: “The striking growth of public international unions in the late nineteenth century aroused the optimistic hopes of many citizens and statesmen for world peace. . . . Sartre could be disdained that illusion.” G. Mangone, supra note 12, at 89. After that, the provisions of the Covenant for international commissions of inquiry into disputes are viewed as another advance towards rationalism: “Such a commission lent itself to reason rather than passion by its impartial fact gathering and its real presence as an international agency at the scene of action, a device gradually waded to international organization.” Id. at 145. But this whole page is then viewed as an era of illusion, as suggested by Albrecht-Carrié’s title to chapter XI: “The False Recovery and the Era of Illusions 1920-1930. R. Albrecht-Carrié, supra note 21, at 385. Realism, however, returned with the Depression, as the title to chapter XII indicates: “The Return to Reality, 1930-1936.” Id. at 448.

\(^\text{162}\) It is perhaps not surprising that both men and women would associate women with the ideals of peace and men with the practice of war:

Men endure great physical hardships in camp and on the battlefield. In our Civil War the death-roll in the Union army alone reached the appalling aggregate of 359,000. But the suffering and peril of the men in the field, distressing as they are to contemplation, are slight in comparison with the woes and anguish of the women who are left behind. The hope that husband, brother, father, son, may be spared the tragic end which all soldiers risk, when they respond to their country’s call, buoy them up in their privations and heart-breaking loneliness. But theirs is the deepest pain, for the most poignant suffering is mental rather than physical. No pension compensates for the loss of husband, son, or father. The glory of death in battle does not feed the orphaned children nor does the pomp and circumstance of war clothe them. The voice of the women of America should speak for peace.

J. Bigelow, supra note 87, at 59-60 (quoting Taft, in Woman’s Home Companion, Aug. 29, 1911).

The wartime popular press often depicted peace as a woman. Unlike the association of one or another person with pragmatism, the association of women with idealism seemed secure. See S. de Beauvoir, The Second Sex (H.M. Parshley trans. 1953).

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By repeatedly working against law, politics, reason, and passion, pushing the alternatives of both “utopian triviality” and “savage realism” into the past, the programs which were implemented and the work of those who implemented them came to seem both touched by noble aspirations (valorized as the excluded woman) and destined for pragmatic success (epitomized by the denigrated intellectual radicals).\(^\text{163}\) This suggests that the move into organization was less the move from law to politics, or from idealism to realism, than a continual process of exclusion of extreme idealism and radical programmatic thought. The “War” was rhetorically transformed from an intrusive error into an avoidable and continually threatening extremism—an extremism against which the institution must remain vigilant. At the same time, the “peace” was transformed from a noble female or a lack of patriotism into a process of institutional management.

E. Organizing a Break

Texts about the League’s establishment narrate international society’s move to institutionalization by combining a difference with a process of differentiation. An initial break provides the opportunity for institutional innovation. The new order retains its institutional character by extending this break in a repeated process of differentiation and exclusion. Examining some of the techniques by which these differences are established has suggested the variety of rhetorics which come together in the Paris Peace Conference. The Conference operated first as a legal instant, a high-water mark of formalism, the moment of signature acting as a hinge between a debased and a redeemed politics. At the same time, the Conference established a movement between utopian theory and political practice, the Conference plenary acting as a substantive hinge—a moment of political constitution—between phases of idealist preparation and reasoned follow-through. In this vision, the Conference is more significant as a process of exclusion and adjustment than as an instant of legal accord.

The key to narratives about the League’s establishment is the dynamic relationship between these two visions—one of momentary dis...
moment of establishment in an ongoing institutional process might generate a troubled consciousness.

For all this, however, an institutional process which manages the relationship between the break and continuation of its birth by repeating them as practices of rhetorical and social exclusion might actually suppress awareness of these difficulties. To the extent the institutional practice re-presents the moment of establishment in the relationship between its text and history, the practice might come to seem urgent and meaningful by association with a moment of historical progress whose importance and meaning it simultaneously confirms. People involved in the institution might experience the meaningfulness of their work "interpreting a living constitution" as well as a certain cynical nostalgia.

It is perhaps fitting that the Great War should have brought this institutional practice to international life. Managing the relationship between an institutional purport—a claim about the meaningfulness of its activities—and an institution's roots in a set of relations which that purport merely imitates might have come more easily to diplomats and scholars after the First World War. In a variety of ways, the War brought the irony and cynicism characteristic of cultural modernity to international relations. The War came as a great collective and international shock, overturning complacency about the divisibility of peace and the inevitability of progress. As nineteenth-century national exuberance became mired in the standoff of trench warfare, the innocence of an instrumental, formal, and national diplomatic consciousness collapsed.

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164 "The western vision of man and his world suffered irreparable damage, and the somber, ironic cast emerging still endures." B. Schmitt & H. Vedeler, supra note 20, at xv.

165 War is seen as "bursting" onto Europe: When war burst upon the world in August 1914, a great number of people in every country of Europe comforted themselves with two thoughts. The first was that their country would be victorious in very short order and at very little cost and that life would return to normal very soon. The second was that, by some magic process, the war would solve all outstanding political, economic, social, and even moral problems and purge Europe of its accumulated ills. . . . Some such rude awakening awaited all the participants in World War I. For that conflict was not short, as we shall see in the next chapter; the enemy was not beaten easily and cheaply; and, after five years of desperate fighting in which a generation of young men was destroyed, it was very difficult to differentiate in any meaningful way between the condition of the victors and that of the vanquished.

G. Craig, supra note 20, at 451.

The onset of hostilities in August 1914 was greeted in many of the cities of the larger countries with an almost carnival gaiety. In London, the mood was one of excitement and enthusiasm; in German towns, reservists on their way to mustard centers were pelted with flowers; in Vienna, crowds promenaded along the Ringstrasse, shouting "Down with Serbia" with every evidence of happiness.
Paul Fussell has termed the First World War an "ironic situation," and one experienced as such by participants in trenches and government bureaus. Fussell argues that participants often remember the War first for the ironic gap between its rhetorical purposes and physical particularity, focusing on the absurd relation between the home front and the trench, the officer's order and soldier's performance, or the image of the enemy as foe and a shared experience of combat. The Great War seemed a rite of passage rather than simply a violent and intense experience precisely because it generated responses to such ironic or absurd gaps.

By calling into question claims about national interest, war aims, and strategy, the War transformed international relations into a rhetorical field. Fussell reports that participants in the War characteristically internalized the gap between their experience of the War and the claims made about it by resorting to euphemism or by developing a sense of living simultaneously as participant and spectator in the war "theater." The War was understood and experienced in terms of mythical and literary narratives. In doing so, those who experienced the War treated both the tragedy and nobility of the War as rhetorical devices.

International institutions accommodate rhetorics of exactly this sort, actively forgetting their rhetorical status. Within international institutions, images and reminders of war and peace are often treated like war and peace themselves. An institutional process suited the new international order because it accommodated the jaded maturity of those, like the poet Siegfried Sassoon or diplomat Harold Nicolson, who had experienced the War. Rather than conducting war for renewal or victory, they would manage a continual re-presentation of war. The extreme social polarization which they had experienced would now be present only rhetorically—its symbols excluded from the arena of institutional management. These speculations about the institutional practice generated by repeating the juxtaposition of an historical and textual establishment set the frame for my own juxtaposition of the League Covenant and the literature about decision-making in the League plenary in the next two sections of this article.

III. THE COVENANT OF THE LEAGUE OF NATIONS

The Covenant of the League transformed the opportunity provided by the War's end into an institution. Of the three establishment themes examined in this article—break, movement, and repetition—the second is most clearly the Covenant's concern. Generating momentum forward into an institutional process demands a sharp break with the past and a recapitulation of the institution's originating situation. It also requires a certain foreshadowing—a promise of the process for which this origin is being left behind. Managing the relations among these various suggestions and references requires sophisticated drafting, clarity of expression, and perhaps most importantly, a shrewd capacity for equivocation. As the institution develops, the Covenant will lean on other texts about the League's origin for support in maintaining the momentum of establishment. The Covenant will be read in the context of narratives about the League's establishment and debate about the ongoing institutional process. The peculiar genius of an establishing text, however, lies in the endogenous generation of institutional momentum.

A. The Status of the Covenant

The League began with a text. As the War was ending, Oppenheim published a series of lectures advocating a League of Nations. He argued that international law "could not have come into existence without at the same time calling into existence a League of Nations" or "community" because "[a]ny kind of an International
Law and some kind or other of a League of Nations are interdependent and correlative."174 The post-War League he proposed, however, "would be compelled to create some kind of organization for itself, because otherwise it could not realise its purpose to make war rarer or abolish it altogether."175 To do so, "this new League would be founded upon a solemn treaty, whereas the League of Nations hitherto was only based upon custom."176 Oppenheimer was right. The modern international institution would be established by written word.

The Covenant of the League of Nations was signed on January 10, 1920, eight months and thirteen days after the text was unanimously approved by the Plenary Session of the Peace Conference.177 Upon completion of the Covenant text, Wilson, speaking at the February 14, 1919 Plenary Session of the Peace Conference said: "I should say of this document that it is not a straightjacket, but a vehicle of life. A living thing is born, and we must see to it that the clothes we put upon it do not hamper it ...."178 For others, the textual birth was a more formal affair. Francis Walters tells us that although the Secretary General appointed in April of 1919 had been busy in London and Geneva throughout the intervening months, January 10, 1920 is the "official birthday" of the League because "the League could not begin to function, formally and officially, until that Treaty came into effect."179

173 Id. at 7, 8.
174 Id. at 6 (emphasis omitted).
175 Id. at 11.
176 Id.
177 On the signature and subsequent ratification of the Covenant, see C.K. Webster & S. Herbert, supra note 10, at 51-55.
178 2 D. Miller, supra note 68, at 563. (The Covenant of the League of Nations must be considered as the most important international treaty ever made. ... [H]istorians of the future will find ... the first constitutional foundation there has ever been for the permanent political organization of the international society of States. ... They will find, in short, that the Covenant was the "Social Contract" by which the civilized nations of the world passed from the "state of nature" in which they previously lived into a Society in which true international government could rapidly evolve.
179 1 F.P. Walters, supra note 10, at 38. This formal approach comports with a positivist approach to the law of treaties generally. Classic positivist accounts of treaty law include C. Berghoorn, Staatsverträge und Gesetze als Quellen des Völkerrechts (1876); G. Jellinek, Die Rechtliche Natur der Staatenverträge—Ein Beitrag zur Juristischen Construction des Völkerrechts (1880); G.F. Martens, The Law of Nations: Being the Science of National Law, Covenant, Power, &c. (W. Cobett trans. 4th ed. London 1829). One American approach to this positivist dilemma of sovereign consent is S. Crandall, Treaties, Their Making and Enforcement (1904). Lord Cecil turns this argument around in discussing the Philimore committee report (itself containing a remarkable brief history of international anarchy and the move to institutions) that:
It will be noticed that the Philimore Committee say that any attempt to build an organization for peace "Must be limited to a policy upon which there is a substantial measure of agreement among the Powers". That is no doubt true. In one sense, it is obvious. Such a system can only be set up by a Treaty, and a Treaty involves the agreement of its signatories. But it must be more than a formal assent if the peace machinery is to be effective.
R. Cecil, A Great Experiment 58 (1941).
180 C. Howard-Ellis, supra note 19, at 99.
181 See 2 D. Miller, supra note 68, at 362-63.
182 1 F.P. Walters, supra note 10, at 40.
It is hardly necessary to insist on the importance of the Covenant, either in the world of political thought, or in the world of political action. The Covenant has for the first time in human history brought into being a permanent international organization extended, or, rather, extensible, to the whole world and affecting all international contacts.
J. Williams, Some Aspects of the Covenant of the League of Nations 2 (1934).
mat at the Paris conference his innocence.183 Harold Nicolson came to Paris to negotiate a “Wilsonian” peace. As the text of the Peace Treaty was prepared for signature, the contrast between public rhetoric at the Conference and the “Carthaginian” compromises of the draft articles convinced Nicolson of the “hypocrisy” of diplomatic speech. As the text swept away the Conference which generated it, Nicolson became convinced that the Conference had been a failure.184 He concluded that diplomatic “conversation” should give way to documentation:

Locarno, not to mention Thoiry, should have convinced us of the desirability of keeping our statesmen segregated, immune and mutually detached. This is not mere paradox. Diplomacy is the art of negotiating documents in a ratifiable and therefore dependable form. It is by no means the art of conversation. The affability inseparable from any conversation between Foreign Ministers produces allusiveness, compromises, and high intentions. Diplomacy, if it is ever to be effective, should be a disagreeable business. And one recorded in hard print.185

But the written word did not replace speech in inter-state affairs. Quite the contrary, by giving birth to the League plenary, the establishing text called forth the very “diplomacy by conference” it seemed to sweep aside. Far from resolving the relationship between diplomatic speech and writing, the Covenant mandated its repetition. If the Covenant succeeded, the movement from speech to writing would henceforth occur inside the League, in the relationship between debate and resolution, punctuated by votes rather than signatures. Although an upcoming text animates speech in both the Conference and the plenary, the Conference responds to war while the plenary looks to the Covenant for meaning and structure. The Covenant will replace war by standing in for the War. It thus establishes its authority not simply by encapsulating its authors, but more importantly by

183 Peacemaking 1919, supra note 18, at 6-7, 215-371 (particularly telling are Nicolson’s comparisons of his contemporaneous diary and memoir account of the same events).

184 He wrote, in a memoir which has become a standard text for aspiring diplomats and diplomatic historians:

What, in the first place, was the nature of this moral and intellectual deterioration? ... We came to Paris confident that the new order was about to be established; we left it convinced that the new order had merely fouled the old. ... [The Paris Peace Conference was guilty of disguising an Imperialistic peace under the surplice of Wilsonism, that seldom in the history of man has such sanctimonious pharisaism of the Treaties is their gravest fault.]

Peacemaking 1919, supra note 18, at 186-87.

185 Id. at 208-09 (emphasis in original).
it could not have been otherwise. On September 27, 1918, Wilson opened the New York Campaign for the Fourth Liberty Loan by noting that

the constitution of that League of Nations and the clear definition of its objects must be a part, is in a sense the most essential part, of the peace settlement itself. It cannot be formed now. If formed now it would be merely a new alliance confined to the nations associated against a common enemy. It is not likely that it could be formed after the settlement.188

However essential their integration, the Covenant and the Peace Treaties differed significantly. Indeed, although both were drafted at Paris, they were the products of separate working groups. A procedural wrangle on the opening day of the Conference frustrated Wilson's determination to make the League "the framework into which the detailed arrangements of the settlement" would be required to fit," and to discuss the League first and in the same forum as other aspects of the settlement.189 Instead, a separate committee was established to draft the Covenant which would meet at the same time as the Council of Ten responsible for the overall peace negotiations. Although Wilson sat in both bodies and acted as Chairman of the

for enforcing the Treaty of Versailles [by making] the supervision of parts of the treaty ... one of its functions); id. at 33 (noting that this intimate relationship "did, however, make the League at once a body with definite duties which could not be postponed and was one of the causes why it survived the difficulties of its early years").

Accordingly the Peace Conference ... doubly deserved its name. Its task was, on the one hand, by the settlement of certain specific national claims, to substitute a state of immediate peace for the state of war ... But on the other hand, it had also, by the establishment of a new international order, to substitute a state of permanent peace for the anarchy which had prevailed over the whole world during the preceding centuries.

Moreover, there were at least two other close ties [besides ideological considerations] between the national and the international elements of the peace settlement. On the one hand, the League of Nations, by far the most important of the international agencies set up, was called upon to cooperate in the solution of various territorial, that is primarily national questions ... And on the other hand, although there was not much enthusiasm for this agency among the heads of the principal European delegations at the Conference, Mr. Ray Stannard Baker is truly right in remarking "Everyone wanted a good strong league of nations to guarantee a treaty in which each first got all he wanted."

W. Rappard, supra note 61, at 61-62. The most fascinating account of Wilson's struggle to integrate the Covenant into the Peace Treaty, from a legal as well as political perspective, is found in 1 D. Miller, supra note 68, at 76-100; see also C. Howard-Ellis, supra note 19, at 117, 109-19 (discussing the "necessity" and the "nature" of the connection between the Covenant and the Peace Treaties at length, concluding with a marvelous section: "The Distinctness and Complementary Nature of the Two Tasks").

188 1 W. Wilson, supra note 30, at 523.
189 A. Zimmer, supra note 19, at 237.

League Committee, the personnel, compositions, and working methods of the two groups were otherwise distinct.190

This procedural separation heightened the sense that drafting a League Covenant and negotiating a Peace Settlement are different tasks to which different talents, timetables, and ideological perspectives are appropriate.191 The League was much more the project of the Americans, or at least the Anglo-Saxons, than of Continental participants, and was associated with the rhetoric and ideology of self-determination and democracy rather than those of reparations and territorial reallocation.192 To an extent, it seemed that establishing a League was a legal matter, more suitable for jurists than the politics of negotiating a peace settlement.193 The politics of establishment, moreover, were forward-looking and speculative rather than rooted in the retributive allocation of the spoils of war.194 Establishment was an ephemeral business, quite unlike the nitty-gritty of boundary drawing.

These differences suggest a relationship between the documents produced by this two-track procedure. Although Wilson insisted that

190 Id. at 237-39; see C. Howard-Ellis, supra note 19, at 87-99; see also C.K. Webster & S. Herbert, supra note 10, at 41-43 (contrasting participation of smaller states in the two processes).
191 On the consequent expectation that smaller powers would be permitted to participate in Covenant drafting, if not in peace negotiation, see C.K. Webster & S. Herbert, supra note 10, at 42, cf. C. Howard-Ellis, supra note 19, at 87-88 (struggle between Wilson and other delegations over composition of Peace Conference).
192 See C. Howard-Ellis, supra note 19, at 89; W. Rappard, supra note 61, at 79-81, 99-102.
193 Cecil, in his autobiography, described the League Committee's reliance upon their legal draftsmen. R. Cecil, supra note 179, at 69.
194 The treaty-makers were subjected to a continuous stream of harsh and passionate pleading, of claim and counter-claim, of historical, statistical, military, economic, and geographic argument. They had to work fast, knowing that any prolongation of uncertainty as to the future of each disputed area caused untold loss and inconvenience to its inhabitants. And with all these insurmountable problems on their hands, they were also responsible for guiding the policies of their own countries in a time of unprecedented difficulty.
195 In these circumstances it might well have been expected that the work of drafting the Covenant and setting the League in motion would be left on one side at least until the territorial questions had been decided.

1 F.P. Walters, supra note 10, at 30-31.
196 The relationship between the League and the territorial settlement at the Paris Conference as to both European boundary drawing (particularly the Saar) and the colonial settlement, is well told by W. Rappard, supra note 61, at 60-103 (contrasting what he terms "national" and "international" orientations at Paris, and concluding that the attempt to involve the League in territorial issues reflected the positive willingness of participants to think of even national issues in international ways). J. Williams, supra note 182, at 20-26, compares the Covenant drafting process to that of a British Act of Parliament. To him, the crucial difference lies in the international nature of the Paris plenary and the link between the Peace Treaties and the Covenant—a link which seems temporally and logically necessary.
the League be discussed first, it was taken up only long enough to be separated from the rest of the work of the Conference. The priority of the peace negotiation seemed a matter of both political and procedural logic. 193 Writing in 1932, as Versailles took the blame for many of the League's difficulties, even Williams, a strong advocate of the Covenant's independent importance, acknowledged that the Covenant was initially both inseparable from and secondary to the Peace Settlement. However important the Covenant would become, a peace conference must simply give priority to the settlement of war: 'The Covenant and the Treaties in their original presentation formed a whole. . . . To have taken the Covenant out of the Treaty would have altered the character of the settlement. If the Treaty had not been linked with the Covenant, it would have had to be quite a different treaty. And some treaty was a necessity. A state of war still existed technically, the blockade of Germany in far more than a merely legal or technical shape continued even after the conclusion of the armistice, and some sort of treaty had to be made. If there was a question which of the two had to come first, the Treaty or the Covenant, the Treaty must have had precedence.' 196

The Treaty preceded the Covenant as war precedes peace, as politics precedes law, and as substance precedes procedure. 197 But if the Treaty expressed the substantive politics of war, it did so textually, "settling" issues left open by war with the technical precision of a lengthy legal document. The Covenant, by contrast, expressed a political aspiration: to complete and ensure the settlement. 198 For some, the League would guarantee the details of the Treaty. 199 For others it would provide a framework for their revision. 200 Upon signing the Peace Treaty for South Africa on June 28, 1919, Smuts declared:

I have signed the Peace Treaty, not because I consider it a satisfactory document, but because it is imperatively necessary to close the war . . . . I look upon the Peace Treaty as the close of those two chapters of war and armistice, and only on that ground do I agree to it. I say this now . . . because I feel that in the Treaty we have not yet achieved the real peace to which our peoples were looking, and because I feel that the real work of making peace will only begin after this Treaty has been signed . . . . This Treaty is simply the liquidation of the war situation in the world.

The promise of the new life, the victory of the great human ideals, . . . the fulfillment of their aspirations towards a new inter-

193 This logical approach seemed consistent with the fourteen points, for however crucial the League may have been to Wilson, he listed it as his final point. See J. Williams, supra note 182, at 25-27; see also F.P. Walters, supra note 10, at 33-34 (describing the "business-like, "informal, and friendly" nature of the League Committee's work by contrast to the hustle-bustle of the Conference as a whole). R. Cecil, supra note 179, at 65-73, also treats the two-track procedure as completely unproblematic.

On the first day of the Conference the French, with their usual clearness and precision, put forward a list of agenda. The League of Nations figured in it—"how, in all honesty, could it be left out?—but, as logic would have it, it was placed at the bottom of the list.

A. Zimmerm, supra note 19, at 238. "Thus, by the play of procedure and of circumstance, a gap was opened, both in British and in French governing circles, between the League and the other issues of the Peace Conference and indeed the whole of the rest of international politics." Id. at 240.

196 J. Williams, supra note 182, at 25-26 (emphasis in original).

197 On the privileging of politics over law at Paris, see, e.g., W. Rappard, supra note 61. See also C. Howard-Ellis, supra note 19, at 88, commenting on the League Commission's terms of reference:

The terms of reference show how essentially political was the conception of the Peace Conference regarding the League. There was indeed a strong and conscious reaction against the "legalistic" conceptions that had inspired the peace work at The Hague, for it was felt that The Hague Arbitral Tribunal and the whole movement behind it proved futile at the crisis of the world war, and it was desired to make it as clear as possible that this was a new start, not to be confused with the discredited older attempt.

198 Although W. Rappard, supra note 61, at 62-99, sees this positively, he emphasizes the involvement of the League in negotiations about territorial issues. J. Williams, supra note 182, at 1-2, treats the Covenant as primarily a political rather than legal document:

The Covenant is not expressed in technical legal language; no British parliamentary draftsman would own it as his child; it is a sketch, or perhaps it is better to say, an impressionist picture on the lines of what not many years ago was the most modern of schools . . . . It therefore would be a mistake to examine the Covenant with a legal microscope; it must be looked at with the naked and human eye of the student of politics, or, perhaps better, of the practitioner of that art.

199 To Smuts, the League would legitimate the international "reversion" of the central European territories.

As a programme for the forthcoming Peace Conference I would therefore begin by making two recommendations:

1. That in the vast multiplicity of territorial, economic and other problems with which the Conference will find itself confronted it should look upon the settlement of the League of Nations as its primary and basic task, and as supplying the necessary organ by means of which most of those problems can find their only stable solution.

2. . . . Reversion to the League of Nations should be substituted for any policy of national annexation.

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2. . . . Reversion to the League of Nations should be substituted for any policy of national annexation.
national order and a fairer, better world, are not written in this Treaty, and will not be written in treaties. . . . A new heart must be given, . . . [a] new spirit of generosity and humanity, . . . can alone heal the wounds . . .

. . . There are territorial settlements which will need revision. . . . There are punishments foreshadowed, . . . [t]here are indemnities stipulated, which cannot be exacted without grave injury . . . .

. . . The real peace of the peoples ought to follow, complete, and amend the peace of the statesmen.

In this Treaty, however, two achievements of far-reaching importance for the world are definitely recorded. The one is the destruction of Prussian militarism, the other is the institution of the League of Nations. I am confident the League of Nations will yet prove the path of escape for Europe out of the ruin brought about by this war.201

The Treaty retained its priority only at the Conference. As it was signed, priority passed to the Covenant.

Many commentators have emphasized the priority of either the Versailles Treaty or the Covenant,202 but this commentary might more readily be addressed to the League practice, which often seemed tilted towards either guaranteeing or eroding the settlement. The establishing text itself equivocates about its priority. On the one hand, the Covenant defers to the Treaty. At Paris, the settlement was an elaborate negotiation conducted on the basis of prior secret treaties among the victors concerning the disposition of spoils and directed towards a set of treaties in which the League, as established by the League Committee, would be reestablished. The League, by contrast, was a Covenant, a moment of formal and consensual coming together—a promise rather than a process. That the Covenant drafting committee's work was less politically contentious or exhausting than that of the Council of Ten is unsurprising.

On the other hand, the Covenant honors the Treaty without yielding to it. The peace settlement is an extravagant ratification of victory, an elaborate celebration of the stability which has emerged from the chaos of war. The Treaty sullies civilization's wounds and

201 C.A. Kuyper, supra note 187, at 139-42 (quoting J. Smuts (S. Afr.) Remarks at the signing of the Treaty of Versailles (June 21, 1919)).

202 See, e.g., I P.P. Walters, supra note 10, at 30-39; C.K. Webster & S. Herbert, supra note 10, at 41; A. Zimmer, supra note 19, at 239; cf. W. Rappard, supra note 61, at 60-62 (emphasizing interdependence of League and territorial issues at Paris, but seeing this positively). Critics of the League, including American isolationists, cited this relationship between the League and the Versailles settlement as evidence that the delegates of the Conference were hopelessly unrealistic and wedded to the old diplomacy.

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signals the reestablishment of peace. The institution established by the Covenant will be an ongoing political process, separated from war by the Treaty. It will experience only the memory or specter of war as it busies itself with what the Covenant terms “disputes” that must be quelled, settled, arbitrated, adjudicated, discussed, avoided—in short, managed. The Covenant inaugurates a politics of the future rather than ratifying a politics of the past.

The zenith of this equivocation is reached as the Covenant and Treaty are signed. At the moment of signature, what had been a political process became a formal textual promise and what had been merely a text became a political institution. In both of these roles, the requisite ambiguity of the text is achieved by surrender to the political process. Whether as the procedural and legal remnant of the Paris negotiations or the initiator of their institutional completion, whether referring back to the Treaty for authority and separation from war or forward to the politics of the settlement's guarantee, the Covenant supplements the Treaty.

This supplemental relationship encourages a somewhat exaggerated sense of the difference between the Covenant and the Treaty. The Covenant seems procedural when the Peace Treaties are substantive, formal when they are informal, legal when they are political, aspirational when they are pragmatic. And yet, the Peace Treaties set up numerous institutional arrangements for implementation of the settlement, and the Covenant is as much a document of political settlement as of institutional establishment.203 The sense of difference and movement from Treaty to Covenant is achieved by treating each in turn as relatively more formal, substantive, or politically fluid. The requisite supplementarity of the Covenant is not achieved by difference, it is the product of an elaborate equivocation within the documents themselves.

C. Substance and Process in The League Covenant

Interpreting the Covenant as a formal and procedural document concerned primarily with a peaceful institutional process is tempting. An establishing text should be brief and concerned primarily with the details of institutional process; indeed, the Covenant is a short and readable document.204 Much of its text concerns issues normally as-

203 See C.A. Kuyper, supra note 187, at 153-67 (detailing clauses in the Peace Treaties dealing with the League of Nations); W. Rappard, supra note 61, at 60-129.

204 Its 26 articles seem downright sparse when compared with the U.N. Charter (111 articles) or the U.N. Convention on the Law of the Sea, Oct. 7, 1982 (320 articles and 9 annexes containing an additional 125 articles).
sociated with institution building: membership, representation, organs, voting, secretariat, seat, etc. Its substantive context should be provided by the political settlement of which it is a part. Attributing the politics of war to the Versailles settlement preserves the Covenant’s innocence. Were the League given a substantive mind of its own, it might threaten the settlement and corrupt the League’s own political process.

But the Covenant is neither free of substance nor concerned primarily with the processes of peace. Although the body of the Covenant leads off with seven articles devoted to institutional matters, of the remaining nineteen, all but three detailing the status of and procedure for amending the Covenant (articles 20, 21, and 26) and one relating the League to other international bureaus (article 24), seem quite substantive. Although three articles detail specific arrangements and obligations with respect to certain colonial territories, the Red Cross, and other humanitarian matters (articles 22, 23, and 25), twelve articles concern the problem of war. Along with an institutional process, the Covenant establishes international systems for war and peace.

The substantive provisions of the Covenant, moreover, are independent of the Versailles Treaty. Institutional provisions typically empower an organ to “deal at its meetings with any matter within the sphere of action of the League or affecting the peace of the world.” Despite its ambivalent relationship to the Peace Treaties, the Covenant is self-contained. A preamble announces the terms of reference for the institutional regime it establishes, setting it off from the Peace Treaties of which it is an integral part:

The High Contracting Parties

In order to promote international co-operation and to achieve international peace and security

by the acceptance of obligations not to resort to war,

by the prescription of open, just and honourable relations between nations,

by the firm establishment of the understandings of international law as the actual rule of conduct among Governments, and

by the maintenance of justice and a scrupulous respect for all treaty obligations in the dealings of organised peoples with one another, Agree to this Covenant of the League of Nations.

The Covenant grounds itself directly in the intentions of the “High Contracting Parties” without reference to either the War or the Versailles Settlement. On February 13, 1918, Mr. Larnau of

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The Covenant grounds itself directly in the intentions of the “High Contracting Parties” without reference to either the War or the Versailles Settlement. On February 13, 1918, Mr. Larnau of
the French delegation proposed mention in the preamble of the League's roots in the War and in the pre-War Hague experience. With respect to the Hague, his amendment was defeated. After discussion, Mr. Larnaude withdrew reference to the War, stating: "I should not wish to introduce into the League any element of hatred for the future." Miller concluded his notes of the meeting with the comment: "It was understood that this vote in no way indicated that the Commission condemned the ideas embodied in the amendment of M. Larnaude but that the Commission considered merely that it was inadvisable to introduce them into the text." Although the preamble asserts the League's teleological indepen-

dence—setting forth the goals which will constrain the powers of organs and inform decisions about membership—Mr. Larnaude's remark introduces a doubt. A teleology without history, without the capacity to "introduce into the League any element of hatred," might almost be thought to restate the aspiration for a Covenant free of substance, a Covenant which would need to rely upon the Peace Treaties for context and authority.

The substantive provisions of the preamble are quite unassuming. We are reminded of aspirations to "promote international co-operation and to achieve international peace and security," but these aspirations are purely motivational, given content only by the institution being established. We are referred to "obligations not to resort to war," to "undertakings of international law," and to "treaty obligations," presumably including the Peace Treaties; yet these references are simply reiterations of substance established elsewhere. Even the obligation not to resort to war is elaborated upon only in the body of the text, a deferral made more explicit in the French draft, which refers to "certain" obligations. At best, the preamble "prescribes" the redemption of politics which the League is to execute: "open, just and honourable relations between nations."

The preamble thus asserts its substantive authority as a modesty about substance which makes us curious about the text and the institution which will fulfill these references and reminders. Indeed, the Covenant as a whole is able to assert a substantive independence without jeopardizing its equivocal subservience to both the peace settlement and the League precisely because substance appears either as an intention still to be fulfilled or as a reminder of obligations detailed elsewhere. The bulk of the Covenant, establishing an international system for war and peace, continues this textual practice.

D. The Covenant: A System for Peace

There seems no more natural association than that of the Covenant with peace. During the War, the yearning for peace was often expressed as the aspiration for a covenanted league. As the Versailles Treaty ended the War, the Covenant began the peace. After the League's establishment, moreover, the Covenant seemed rooted in the peace which was made at Paris. From the perspective of both the War which it replaced and the process which it established, the Covenant epitomizes the arrival of peace—tainted neither by the War nor

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213 On the difference between the French and English drafts, see I D. Miller, supra note 68, at 505-36; A. Zimmerm, supra note 19, at 274-78.  
214 League of Nations Covenant preamble.