



Versailles as a Founding Moment?

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William Orpen, *The Signing of Peace in the Hall of Mirrors, Versailles, 28 June 1919*¹

The KWI, the League of Nations and German International Law Doctrine

The trend towards diagnosing crises has now reached the historiography on international diplomacy and international law of the interwar period. A fundamental characteristic of the presentist tone of many publications is that international law, and in particular the international humanitarian law of war, is today more than ever seen as a cause rather than a solver of problems. When the more recent critical literature on the League of Nations is placed in a longer chronological context, it becomes clear that research perspectives and key questions have shifted and expanded significantly. Apart from the geographical and temporal “decentring” of the First World War,² the study of which has increasingly shifted from the West to the East and

¹ Photo: [Wikimedia Commons](#).

² Jay Winter, *The Day the Great War ended, 24 July 1923. The Civilianization of War*, Oxford: Oxford University Press 2022, 1; Christin Pschichholz (ed.), *The First World War as a Caesura? Demographic Concepts, Population*





to the early post-war years in recent times, the shifts in the history of international law are primarily to be found in two areas:

Firstly, a trend has come up which, following the studies of Janne Elisabeth Nijman³ and Anne Peters⁴, points to the emergence and historical significance of new, often transnational legal entities and legal subjects in the context of the League of Nations and other international organisations. Researchers such as Natasha Wheatley have rightly pointed out that the actual influence of new actors in international law – including confessional, national, and ethnic minorities, inhabitants of newly created League of Nations mandates, Jews, women and stateless persons – remained mostly peripheral and at the level of a “ghost-like presence” in the 1920s and 1930s.⁵ Despite this, however, the founding of the League of Nations also opened up an enabling space that was actively utilised by numerous non-state entities, groups and individuals.

A *second* shift, which can also be traced back to the synergy of a cultural-historical approach to diplomacy, military history, and international law, is that research has largely freed itself from constrictions imposed by a national-historic and state-dominated understanding and from simple causalities. Today, “Lausanne” in particular is perceived as a prominent example of a peace agreement that came about when the negotiating parties appropriated the “Wilsonian moment” (Erez Manela) and charged its central concept of self-determination with new meanings. Unlike “1919”, the cipher “1923” therefore stands for a complex of events that symbolises the process of the drifting apart of democracy, emancipation, and self-determination, which, with the National Socialist grip on Austria and the Sudetenland at the end of the 1930s, paved the way into the abyss of the Second World War.⁶

Policy, and Genocide in the late Ottoman Empire, Russian, and Habsburg Spheres, Berlin: Duncker & Humblot 2020.

³ Janne Elisabeth Nijman, *The Concept of International Legal Personality: An Inquiry into the History and Theory of International Law*, Den Haag: T.M.C Asser Press 2004.

⁴ Anne Peters, *Beyond Human Rights. The Legal Status of the Individual in International Law*, Cambridge: Cambridge University Press 2016.

⁵ Natasha Wheatley, *New Subjects in International Law and Order*, in: Glenda Sluga/Patricia Clavin (eds.), *Internationalisms. A Twentieth-Century History*, Cambridge: Cambridge University Press 2017, 265-286 (272).

⁶ Gürol Baba/Jay Winter, *The Wilsonian Moment at Lausanne. 1922-1923*, in: *Journal of Modern European History* 20 (2023), 536-553; the fact that the revisionist policy making in Kemalist Turkey was considered a model within the rightist political camp in Germany is exemplified by the “*Türkenbegeisterung*” (“Turk enthusiasm”): Sabine Mangold-Will, *Vorbild Türkei – dunkles Licht aus dem ‚Orient‘. Zu einer transnationalen Geschichte der Weimarer Republik auf dem Weg in den Abgrund*, in: Christoph Cornelißen/Dirk van Laak (eds.), *Weimar und die Welt. Globale Verflechtungen der ersten deutschen Republik*, Göttingen: Vandenhoeck & Ruprecht 2020, 181-193.





Wilhelminians in Weimar. Governmental Scholarship Policy in the Old Hohenzollern Palace

As historian Isabella Löhr rightly criticises, research on the Weimar Republic still tends to play down the significance of the League of Nations for politics and for society at the time.⁷ The same can be said about the historiography of international law, which for a long time was content to emphasise the antagonistic attitude of the young international law scholarship in the Weimar Republic towards the unpopular order of Versailles. Only recently has critical historical research recognised that national-apologetic revisionism and an internationalism – understood more as technocratic than liberal-democratic – were two categories of an emerging Weimar policy on international law scholarship that were not mutually exclusive, but rather complementary.

The example of the founding histories of the Berlin Kaiser Wilhelm Institute for Comparative Public Law and International Law (*Kaiser-Wilhelm-Institut für ausländisches öffentliches Recht und Völkerrecht*, KWI) and its Berlin “sister institute” for foreign and international private law, large parts of which still need to be researched, illustrates the underlying ambivalences and contradictions. Even the choice of location – the old Hohenzollern palace in the historic centre of Berlin – can be interpreted as an expression of an ambitious and sophisticated scholarship policy programme. The decision to develop Berlin into an additional centre of international law, alongside Kiel and Hamburg, which was made between with politicians, economic representatives and the KWI in 1924 signalled that one was eager to take account of the growing importance of international law as a future key academic discipline.

The initiative was thereby part of a process of restructuring and differentiation of German jurisprudence that began towards the end of the war and was reflected in numerous new foundings and re-foundings. A certain change of course laid in the fact that, after the end of the Ruhr crisis and the adoption of the Dawes Plan in August 1924, the mainstream of German international law scholarship moved, for strategic reasons and temporarily, to accept the rules of the post-war international order and its legalistic instruments (Permanent Court of Justice, mixed arbitration tribunals, Codification Committee, Mandate Commission, etc.). Unsurprisingly, the primary interest was to influence the international sphere by combining science and practice and to achieve an overcoming of the Versailles order from within – a self-imposed task which, from the point of view of all parties involved, required the closest

⁷ Isabella Löhr, *Deutschland im Völkerbund*, in: Cornelißen/van Laak (fn. 6), 275-311.





Portrait of the President of the Reich Court
Walter Simons, 1931 (Photo: BArch, Bild
102-12279 / CC-BY-SA 3.0.)

possible, but not universally visible, connection to the Berlin ministries of the Empire and Prussia.⁸

The fact that this project gradually gained momentum from the mid-1920s onwards was primarily due to the influence of Walter Simons (1861-1937).⁹ The lawyer and diplomat, originally from Elberfeld in the Rhineland, quickly became one of the most eager and efficient promoters of a policy of international law scholarship in Weimar. After Chancellor Prinz Max von Baden had appointed the 57-year-old to the Reich Chancellery as a Ministerial Director in October 1918, he played a key role in practically all international law conceptualisations of the changing governments.¹⁰ As a genius networker and academic organiser, he promoted the establishment of transdisciplinary think tanks and encouraged the German Society for International Law (*Deutsche Gesellschaft für Völkerrecht*, DGVR), founded in 1917, to develop its own German concept of a League of Nations, which was intended as a counter-draft to the “Anglo-Saxon” dominated draft of the Entente powers.¹¹

In his function as Foreign Minister (1920-1921), Simons was also the one who justified Germany’s refusal to join the existing League of Nations with the argument that it was not a “real community of peace among nations”, but merely an “insurance company for the victors

⁸ Ingo Hueck, *Die deutsche Völkerrechtswissenschaft im Nationalsozialismus: Das Berliner Kaiser-Wilhelm-Institut für ausländisches öffentliches Recht und Völkerrecht, das Hamburger Institut für Auswärtige Politik und das Kieler Institut für Internationales Recht*, in: Doris Kaufmann (Hrsg.), *Geschichte der Kaiser-Wilhelm-Gesellschaft im Nationalsozialismus. Bestandsaufnahme und Perspektiven der Forschung*, Göttingen: Wallstein Verlag 2000, 490-527 (500).

⁹ A memorandum from October 1925, which the first director of the Institute, Viktor Bruns, sent to the Foreign Office (PAAA, RZ 403/54245, p. 4), states: “The need to create such an office, which constantly monitors and collects international legal processes, was emphasized by the President of the Reich Court [*Reichsgerichtspräsident*] Dr Simons in a detailed discussions with the director of the new institute, while referring to his experience as the former head of the Foreign Office”.

¹⁰ The literature on Simons is sparse and outdated; an overview is provided by: *Björn Thomann*, *Walter Simons: Reichsgerichtspräsident (1861-1937)*, in: Internetportal *Rheinische Geschichte*, <www.rheinische-geschichte.lvr.de/Persoenlichkeiten/walter-simons/DE-2086/lido/5db6e9fa0143d6.64435435#toc-14>, last accessed: 29.10.2023.

¹¹ Martti Koskeniemi, *The Gentle Civilizer of Nations. The Rise and Fall of International Law 1870-1960*, Cambridge: Cambridge University Press 2001, 235.





of the world war”.¹² As a typical Wilhelminian, he also adhered to an understanding of academia that moved along the historical-political paths of the “politics of scholarship” of the Second German Reich, invoked among others by Friedrich Meinecke. In 1922, Meinecke countered the accusation made by the Allies that German professors shared considerable responsibility for the outbreak and crimes of the war with the placating argument that there had been an exceptionally broad “mobilisation of minds” after 1914, in which the social group of professors had only played a limited role. The renowned historian summarised: “We were all standing more at the front than we were facing the front.”¹³

This view of history, as set out by Meinecke, was also acceptable to most international law scholars. Even if nothing changed in their fundamental opposition to the order of the League of Nations, a rhetoric that was mainly limited to harsh demarcation and denial no longer seemed to be in keeping with the times in the mid-1920s. Additionally, the realisation that German jurisprudence was undergoing a dynamic change under the influence of social and economic modernisation trends, which manifested itself in debates about scientific principles and methods, was growing at this time.

Meanwhile, in the so-called ‘quiet’ Weimar years from the end of the Occupation of the Ruhr in 1924 to the global economic crisis of 1929, political and ideological factions within the legal scientific community became increasingly noticeable. As Christoph Schönberger recently showed, using the example of the Weimar constitutional law scholarship, the founding of the German Association of Constitutional Law Professors (*Staatsrechtslehrervereinigung*) was largely due to national-conservatives associated with Heinrich Triepel fearing that they would sooner or later be marginalised by progressive modernisers.¹⁴ Similar patterns of perception also played a role in the creation of the new Berlin KWI. It was hardly a coincidence, therefore, that the plans took shape at a time when Walther Schücking, an emphatic representative of a policy of rapprochement, was appointed to the Codification Committee of the League of Nations while at the same time warming up to succeed Theodor Niemeyer at the Kiel Institute. The fact that the initiative to create a new centre for international law was, from the outset and despite all statements to the contrary, guided by the intention of setting a political counterpoint to Kiel and Hamburg is clear not least from the homogeneous composition of the staff: While Heinrich Triepel and Rudolf Smend were appointed “scientific co-directors”, the relatively unbeknown Viktor Bruns, a student of Triepel with close ties to the University of Berlin and the Foreign Office, was chosen for the post of first managing director.

¹² *Gerhard Stuby*, Vom ‚Kronjuristen‘ zum ‚Kronzeugen‘. Friedrich Wilhelm Gaus: ein Leben im Auswärtigen Amt der Wilhelmstraße, Hamburg: VSA 2008, 89; translated by the editor.

¹³ *Friedrich Meinecke*, Drei Generationen deutscher Gelehrtenpolitik, *Historische Zeitschrift* 125 (1922), 248-283 (252); translated by the editor.

¹⁴ *Christoph Schönberger*, Ein sonderbares Kind der Revolution. Die Gründung der Vereinigung und die Weimarer Zeit, in: Pascale Cancik et al. (eds.), *Streitsache Staat. Die Vereinigung der deutschen Staatsrechtslehrer 1922-2022*, Tübingen: Mohr Siebeck 2022, 3-37.





Also worth mentioning in this context, are Bruns' friendly relations with the influential American international law expert Edwin M. Borchard, who, as a representative of an isolationist school sceptical of the League of Nations, accompanied the establishment of the KWI from the very beginning.¹⁵ However, the strange affiliation of the Germanophile Jewish lawyer Borchard with Bruns and the Institute, which survived the Nazi era and the Holocaust, needs to be investigated in more detail.

Expert Cultures in the International Law Struggle Against “Versailles”

On 26 February 1975, on the occasion of the 50th anniversary of the KWI/MPIL, Hermann Mosler gave a lecture on the conditions for the development of international law scholarship in the middle years of the Weimar Republic. He contextualised the founding of the institute in 1924/25 with the contemporary debates surrounding the Treaty of Versailles. One remarkable aspect of the anniversary lecture is that, as late as 1976, the MPIL director saw the work of the newly established institution as being a legitimate means of a generally accepted revision policy. Moreover, it was obviously important to him to emphasise the autonomy of the institute vis-à-vis the governments of the time. Mosler stated:

“In the 1920s, a fight was waged against the Treaty of Versailles, which was perceived as unjust. The political goal was to achieve equal rights for Germany. The legal means provided by the treaty itself were to be exhausted. In addition, there were arguments for the revision thesis derived from the background of the treaty in the autumn of 1918.

The institute owes its founding largely to the need to conduct the debate with solid international law arguments on the basis of comprehensive documentation. This rationale should not be criticised retrospectively as a relapse into outdated nationalism. The academic institution that was created was not an auxiliary organ of the government, but an institute for fundamental research, which initially saw its task as building up an excellent collection of literary and documentary material that did not yet exist in Germany.”¹⁶

The question of the positioning of the KWI within the tense relationship between science and politics in the 1920s was already answered by science historian Bernhard vom Brocke at the end of the 1980s with a clear “as well as”. The “set-up of the institute as an ‘independent association’ and its administrative support by the KWG” enabled the government

¹⁵ See: Jens Steffek/Tobias Heinze, Germany's fight against Versailles and the rise of American realism: Edwin Borchard between New Haven and Berlin, in: Jens Steffek/Leonie Holthaus (eds.), Prussians, Nazis and Peaceniks. Changing Images of Germany in International Relations, Manchester: Manchester University Press 2020, 100-122.

¹⁶ Hermann Mosler, Völkerrecht als Rechtsordnung, HJIL 36 (1976), 6-47 (14); translated by the editor.





to “maintain an institute that was government-related and yet independent of it, which collected relevant materials, advised the government and parliament in their legal-political struggle against the Treaty of Versailles, but, at least formally, stood above the party dispute and was not subject to the daily politics of changing coalitions”.¹⁷

With regard to the initial hypothesis in the title of this article, it can be concluded that the view of international law as an “intellectual weapon” (as was stated *verbatim*) in the hands of the militarily inferior was clearly part of the self-perception of the institute’s founders and their supporters. This self-positioning in an international constellation characterised by asymmetries in political power and antagonisms is reflected in the surviving memoranda and parliamentary debates, which referred to the necessity of rejecting “unjustified claims” against the German Empire by the former wartime enemy with the help of own conceptions of international law.

Beyond this unchallenged founding consensus, however, at least a short-term and partial diversification, redefinition, and questioning of earlier positions seems to have taken place in the course of further developments, especially after Germany’s admission to the League of Nations in September 1926, which led to a gradual loosening of the “revision syndrome” (Michael Salewski) and a detachment from German legal exceptionalism. One task for future legal-historical research could therefore be to enquire into the preconditions and stages of that transformation process, parts of which the discipline was able to follow-up on after 1945.

Translation from the German original: Áine Fellenz

¹⁷ *Bernhard vom Brocke*, Die Kaiser-Wilhelm-Gesellschaft in der Weimarer Republik. Ausbau zu einer gesamtdeutschen Forschungsorganisation (1918-1933), in: Rudolf Vierhaus/Bernhard von Brocke (eds.), *Forschung im Spannungsverhältnis von Politik und Gesellschaft. Geschichte und Struktur der Kaiser-Wilhelm/Max-Planck-Gesellschaft*, Stuttgart: DVA 1990, 197-354 (302); translated by the editor.

