



The Institute's Weimar Years and the Gap between Comparative Public Law and International Law

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Breakfast reception given by the Ministry of the Exterior in Warsaw 1930. Viktor Bruns in the middle, behind the lady in the light-colored dress. The picture was likely taken in the context of the German-Polish Arbitral Tribunal).¹

"Motor cars dash along our streets. [...] Aircraft slip through the air [...]; they disregard national frontiers and bring nation closer to nation. [...] The simultaneity of events enormously extends our concept of "space and time," it enriches our life. [...] We become cosmopolitan. [...] Trade union, co-operative, Lt., Inc., cartel, trust, and the League of Nations are the forms in which today's social conglomerations find expression [...]. Co-operation rules the world. [...] Each age demands its own form. [...] Internationalism is the prerogative of our time."²

¹ Photo: Private Archive of Rainer Noltenius.

² *Hannes Meyer*, *Die Neue Welt*, *Das Werk* 13 (1926), 205 (205, 221, 222), translation following: thechannelhouse.org.





This quote is not from the *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* (*ZaöRV*, English title: Heidelberg Journal of International Law), but from the 1926 essay "The New World" ("*Die Neue Welt*") by the architect and urbanist Hannes Meyer. Meyer worked at the *Bauhaus* from 1926 to 1930, ultimately as director. In 2023/24, we are not only celebrating the 100th anniversary of the Institute for Comparative Public Law and International Law, but also the 100th anniversary of the Bauhaus exhibition in Weimar. At the Bauhaus, the positioning between theory and practice was a fundamental conflict. Founded in 1924, the Kaiser Wilhelm Institute (KWI) for Comparative Public Law and International Law, founded in 1924, was to deal with the legal issues in its field of activity from a practice-orientated and dogmatic perspective. This positioning is crucial for understanding the Weimar years of the Institute under the directorship of Viktor Bruns. On the one hand, the aim was to promote international law as a legal system and to raise the standard of international law scholarship in Germany. On the other hand, the legal expertise gathered at the KWI was seen as an important factor in Germany's positioning vis-à-vis the Treaty of Versailles.³ In this respect, the KWI was also situated between theory and practice or "between scholarship and political advisory".⁴

Apart from these parallels, Meyer's text is of interest for understanding the KWI in the Weimar years for another reason: The text bears witness to a perceived internationalism in the mid-1920s, which will not have been representative, but nonetheless formative. Internationality in art and culture, but also in the economy, was already very advanced before the First World War; the war destroyed many of these connections.⁵ However, internationality could be perceived and experienced in many ways by individuals in everyday life during the Weimar years. In contrast, the KWI's agenda remained essentially focussed on foreign relations in the classic intergovernmental sense. This corresponded to the "boundary" "sharply drawn" also by contemporaries between international law and constitutional law.⁶ The Institute was not intended to deal solely with international law, as the possible application of international law in practice largely depended on the constitutional constraints of the states. It therefore seemed necessary to include foreign public law in the research.⁷ Accordingly, "comparative public law" and "international law" are not only part of the name of the KWI, but also of *Beiträge zum ausländischen öffentlichen Recht und Völkerrecht* ("Contributions on Comparative Public Law

³ Felix Lange, Between Systematization and Expertise for Foreign Policy, EJIL 28 (2017), 535-558 (537, 543); Ingo Hueck, in: Doris Kaufmann (ed.), Geschichte der Kaiser-Wilhelm-Gesellschaft im Nationalsozialismus. Bestandsaufnahme und Perspektiven der Forschung, Göttingen: Wallstein 2000, 490-491; [Rüdiger Hachtmann, The Kaiser Wilhelm Institute for Comparative Public Law and International Law 1924 to 1945, MPIL100.](#)

⁴ „International law as a legal order? The KWI between scholarship and political advisory“ („*Völkerrecht als Rechtsordnung? Das KWI zwischen Wissenschaft und Politikberatung*“, translated by the editor) was the title of a panel held on 15 June 2023 in the context of the interdisciplinary seminar series "100 Years of Public Law" on the history of the MPIL.

⁵ On culture: Peter Gay, Die Republik der Außenseiter: Geist und Kultur in der Weimarer Zeit 1918-1933, Berlin: Fischer 1989, 25.

⁶ See: [Dieter Grimm, 100 Years of Public Law, MPIL100.](#)

⁷ Carlo Schmid, Erinnerungen, Stuttgart: S. Hirzel 2008, 120.





and International Law”), which was founded in 1927, and *ZaöRV*, which has been published since 1929.

Consequently, the focus was not on the *domestic* constitutional law of foreign relations of the 1919 Weimar Constitution, which was innovative also in this respect. In the 1920s, "constitutional law of foreign relations" (“*Außenverfassungsrecht*”) was not yet established as a field of research. As a university subject (“*Staatsrecht III*”) and subject of publications, constitutional law of foreign relations only emerged much later, in the Federal Republic of Germany in the mid-1970s.⁸ However, the legal concept of "foreign affairs" (“*auswärtige Gewalt*”) had already become established with Albert Hänel's textbook published in 1892⁹ and contemporaries were aware that the question of the relationship between international law and domestic law was becoming increasingly important in view of the multiplication of international points of contact.¹⁰ Obviously, no institute for "international law and national law" was founded in 1924. Nevertheless, the observation is not trivial: with the orientation of the institute, a perspective on "[international law as a legal system](#)" in itself¹¹ was lost. This concerns its - potential - significance for individuals, its impact on the domestic legal and social order under the new constitution, as well as its connection with the democratic process and its significance for judicial practice. A programmatic gap emerged between "comparative public law" and "international law". At the same time, the significance of international law beyond traditional foreign relations was obscured.

⁸ *Frank Schorkopf*, *Staatsrecht der internationalen Beziehungen*, Munich: C.H. Beck 2017, § 10 para. 87.

⁹ *Albert Hänel*, *Deutsches Staatsrecht, vol.1, Leipzig: Duncker & Humblot 1892*, 531-562; cf. *Schorkopf* (fn 8), § 10 para. 14.

¹⁰ *Ruth D. Masters*, *The Relation of International Law to the Law of Germany*, *Political Science Quarterly* 45 (1930), 359-394 (359).

¹¹ *Viktor Bruns*, *Völkerrecht als Rechtsordnung I*, *HJIL* 1 (1929), 1-56.





Innovative Weimar "Constitutional Law of Foreign Relations"



Bundesarchiv, Bild 102-08214
Foto: o.Äng. | 11. August 1929

Verfassungsfeier ("Constitution Day") on 11 August 1929. The Federal Board of the Reichsbanner ("Banner of the Reich", an anti-fascist political organization) in front of the Berlin Palace.¹²

The Weimar Constitution embraced an influence of international law on domestic law, as well as an inherent connection between the democratic constitutional state and the international order. According to Article 4, the "rules of international law, universally recognized" were "deemed to form part of German federal law and, as such, have obligatory force".¹³ This new article in a prominent position at the beginning of the constitutional text initially had a symbolic function. It proclaims Germany's re-entry into the community of nations and marks a break with the past. Hugo Preuß formulated in the National Assembly:

¹² BArch, Bild 102-08214 / CC-BY-SA 3.0.

¹³ Translation following: Heinrich Oppenheimer, *The Constitution of the German Republic*, London: Stevens and Sons 1923, Appendix: The constitution of the German Federation of August 11, 1919, 219-260.





"We want to organise a united, free, and national state, but not in nationalist isolation. Like once the young United States of North America entered the circle of the old world of states with a commitment to the binding force of international law, the young German Republic commits [...] to the validity of international law."¹⁴

This was of course controversial, also in the National Assembly (*Nationalversammlung*) and the Constitutional Committee (*Verfassungsausschuss*).¹⁵ The idea of the "integration of the Reich as a democratic constitutional state into the community of international law"¹⁶ was still expressed in Section 2 of the draft versions by Preuß, which summarised the democratic principle and constitutionally sanctioned commitment to international law in one and the same constitutional provision.¹⁷ Materially, the individual, whose relations with the international community had hitherto been completely mediated, was, by Article 4 of the new constitution, brought into direct contact with international law.¹⁸ However, this "Völkerrechtsfreundlichkeit" (a term coined by Gerhard Anschütz, that can loosely be translated to "openness towards international law")¹⁹ laid down in Art. 4 WRV was often undermined in the legal literature and in court practice after 1919 by the interpretation of "rules of international law, universally recognized" as requiring the specific consent of the *Reich* to the relevant rule of international law.²⁰ In this respect, Anschütz's commentary reflects the prevailing doctrine: In order to be considered a binding component of German federal law, a rule of international law must be "recognised" by the German Empire and this recognition is "freely revocable".²¹

¹⁴ Verhandlungen der verfassungsgebenden Deutschen Nationalversammlung, vol. 326, Stenographische Berichte 1920, 286A (Minutes of the 14th session, 24 February 1919), translated by the editor.

¹⁵ *Laila Schestag*, Weimar International, Jahrbuch des öffentlichen Rechts der Gegenwart 2022, 373-413 (393–396), with references.

¹⁶ *Hugo Preuß*, Reich und Länder. Bruchstücke eines Kommentars zur Verfassung des Deutschen Reiches, Köln: C.Heymann 1928, 82, translated by the editor.

¹⁷ *Vorentwurf* (draft I) dated 3 January 1919; *Entwurf des allgemeinen Teils der künftigen Reichsverfassung* (draft II), dated 20 January 1919; see *Schestag* (fn 15), 400-402, with further references.

¹⁸ *Preuß* (fn 16), 86-87; see also *Alfred Verdross*, Reichsrecht und internationales Recht. Eine Lanze für Art. 3 des Regierungsentwurfes der deutschen Verfassung, Deutsche Juristen-Zeitung 24 (1919), 291-293 (292–293); *Gerhard Anschütz*, Die Verfassung des Deutschen Reichs. Ein Kommentar für Wissenschaft und Praxis, Berlin: Georg Stilke 1933, Art. 4, 62-63.

¹⁹ *Anschütz* (fn 18), 68.

²⁰ *Thilo Rensmann*, Die Genese des "offenen Verfassungsstaats" 1948/49 in: Thomas Giegerich (ed.), Der „offene Verfassungsstaat“ des Grundgesetzes nach 60 Jahren, Berlin: Duncker & Humblot 2010, 37-58 (44-46); references to legal cases: *Lawrence Preuss*, International Law in the Constitutions of the Länder in the American Zone in Germany, AJIL 41 (1947), 888-899 (893–895).

²¹ *Anschütz* (fn 18), 65, 68, translated by the editor.





International Law Beyond Traditional Foreign Relations

Even before 1914, international law was becoming increasingly important in the domestic sphere.²² In 1891, Hugo Preuß, who was later to become a "father of the Weimar Constitution" emphasised the "intimate connection" of international law "with economic life": "International law [...] exists in the most vivid reality; in a thousand circumstances of daily life, it makes its existence gloriously perceivable".²³ Even though the First World War marked a turning point, international treaties and membership in international organisations regained importance afterwards. Despite the general rejection of the Treaty of Versailles and the nationalism prevailing in public opinion, Weimar Germany was internationally integrated and engaged. In the 1920s in particular, Germany concluded a number of international treaties,²⁴ many of them related to issues of peace and security. The KWI dedicated a separate collection of documents to these "political treaties".²⁵ In the Weimar Republic, foreign relations as a whole were understood to a certain extent as a political-military matter.²⁶ However, the number of treaties relating to people's daily lives and the economic and social order was even greater.

For example, Germany joined the Madrid system for the international registration of trade marks in 1922.²⁷ The relevant treaties also include the Convention and Statute on the International Régime of Maritime Ports of 1923,²⁸ the German-American Treaty of Friendship, Commerce and Consular Relations of 1923,²⁹ and the Hague Agreement Concerning the International Deposit of Industrial Designs of 1925.³⁰ By acceding to the Barcelona Convention and Statute on Freedom of Transit of 1921³¹, Germany fulfilled its obligation under Art. 379 of the Treaty of Versailles "to adhere to any General Conventions regarding the international regime of transit, waterways, ports or railways which may be concluded by the Allied and Associated Powers, with the approval of the League of Nations, within five years [...]".³²

²² *Peter Caldwell, Sovereignty, Constitutionalism, and the Myth of the State: Article Four of the Weimar Constitution*, in: Leonard V. Kaplan/Rudy Koshar (eds.), *The Weimar Moment. Liberalism, Political Theology, and Law*, Lanham: Lexington Books 2012, 345-370 (350).

²³ *Hugo Preuß, Das Völkerrecht im Dienste des Wirtschaftslebens*, Berlin: L. Simion 1891, 4-5, translated by the editor.

²⁴ [Wikipedia: Treaties of the Weimar Republic](#).

²⁵ *Viktor Bruns* (ed.), *Politische Verträge: Eine Sammlung von Urkunden*, 3 vols, Berlin: Carl Heymann 1936-1942.

²⁶ *Gaines Post, The Civil-Military Fabric of Weimar Foreign Policy*, Princeton: Princeton University Press 2015.

²⁷ *Madrid Abkommen über die internationale Registrierung von Marken*, 14.4.1891, RGBl. 1922 II S. 669.

²⁸ *Übereinkommen und Statut über die internationale Rechtsordnung der Seehäfen*, 9.12.1923, RGBl. 1928 II S. 23.

²⁹ *Freundschafts-, Handels- und Konsularvertrag*, 8.12.1923, RGBl. 1925 II S. 795.

³⁰ *Haager Abkommen über die internationale Hinterlegung gewerblicher Muster und Modelle*, 6.11.1925, RGBl. 1928 II S. 175, 203.

³¹ *Übereinkommen und Statut über die Freiheit des Durchgangsverkehrs*, 14.4.1921, RGBl. 1924 II S. 387.

³² *Friedensschluß zwischen Deutschland und den alliierten und assoziierten Mächten (Versailler Vertrag)*, 28.6.1919, RGBl. 1919 S. 687, translation following: [Wikisource](#).





Particularly significant in this area are the conventions of the *International Labour Organization (ILO)*, of which Germany had been a member since 1919. Of a total of 63 conventions adopted by the International Labour Conference up to and including 1933, Germany ratified as many as 19 between 1925 and 1933.³³ However, international labour law has always played a relatively marginal role in Germany.³⁴ The reasons for this can be found, on the one hand, in the historically older roots of national labour and social law and, on the other hand, in the attitude towards the Treaty of Versailles, which contained the ILO-Constitution as part XIII. In retrospect, however, this German distance from the ILO appears to be in tension with the social programme³⁵ of the Weimar Constitution.

In 1926, Germany became a member of the League of Nations, which was also significant beyond questions of peace, security and disarmament.³⁶ The "Commission on New States" established in 1919 drew up treaties for the protection of minorities in the Eastern European states under the guarantee of the League of Nations,³⁷ including the Polish Minorities Treaty,³⁸ which benefited the German minority in Poland. The structure of the League of Nations included the Economic and Financial Organisation,³⁹ the Health Organisation, the Communications and Transit Organisation, the International Committee on Intellectual Cooperation, the Permanent Central Opium Board, the Advisory Committee on Traffic in Women and Children, the High Commission (and later International Office) for Refugees and the Committee for the Study of the Status of Women. Admittedly, the later system of international co-operation in economic and social matters as established by the UN-Charter is unprecedented in the League of Nations and is also regarded as one of the lessons learnt from the economic chaos and social ills of the interwar period as a threat to peace.⁴⁰

The introduction to the new edition of Franz von Liszt's 1925 textbook on international law provided an overview of the new topics of international law resulting from the "changed circumstances", including the mandate system, inland waterway transport, international labour

³³ [International Labour Organization, Ratifications for Germany](#), with references.

³⁴ *Sandrine Kott*, Dynamiques de l'internationalisation: l'Allemagne et l'Organisation internationale du travail (1919-1940), *Critique Internationale* 52 (2011), 69-84 (71).

³⁵ *Michael Stolleis*, Die soziale Programmatik der Weimarer Reichsverfassung, in: Horst Dreier/Christian Waldhoff (eds), *Das Wagnis der Demokratie: Eine Anatomie der Weimarer Reichsverfassung*, Munich: C.H. Beck 2018, 195-218.

³⁶ *League of Nations*, The Development of International Co-operation in Economic and Social Affairs: Report of the Special Committee (Bruce Report) 1939, L.o.N. A.23.1939; cf. *Patricia Clavin*, *Securing the World Economy: The Reinvention of the League of Nations, 1920-1946*, Oxford: Oxford University Press 2013.

³⁷ [Carl Georg Bruns, Die Garantie des Völkerbundes über die Minderheitenverträge, HJIL 2 \(1931\), 3-16.](#)

³⁸ [Minorities Treaty between the Principal Allied and Associated Powers and Poland, signed 28 June 1919.](#)

³⁹ Cf: *Patricia Clavin/Jens-Wilhelm Wessels*, Transnationalism and the League of Nations, *Contemporary European History* 14 (2005), 465-492; *Yann Decorzant*, La Société des Nations et l'apparition d'un nouveau réseau d'expertise économique et financière (1914-1923), *Critique Internationale* 3 (2011), 35-50.

⁴⁰ *Mohammed Bedjaoui*, Article 1 (commentaire général), in: Jean -Pierre Cot/ Alain Pellet, *La Charte des Nations Unies. Commentaire article par article*, Paris: Economica 2005, 318.





standards, the League of Nations, war prevention including disarmament and the Permanent International Court of Justice.⁴¹ A review of volumes 1-3 (1929-1933, totalling more than 2,300 pages) of the *ZaöRV* only partially confirms this finding however;⁴² in particular, it is not reflected in the systematic subdivision of the "First Division: International Law".

Germany was also significantly involved in international dispute settlement. In the 1920s, Germany was generally successful before the Permanent International Court of Justice, particularly with regard to German interests and minority rights in Poland.⁴³ The League of Nations and the Permanent Court of International Justice were associated with the hope that the international legal order created in the light of the experiences of the First World War would lead to the creation of a universal legal community. This hope was based - especially for Germany as the loser of the war - above all on the legalistic vision of an order in which all states would agree to compulsory arbitration by an international court.

International Law as a "Legal Order for the Community of States"

This is where Bruns comes in with his innovative [article](#) in the first issue of the *ZaöRV* of 1929, which is to be understood as a programmatic foundation. Between 1927 and 1932, he himself served as an *ad hoc* judge at the Permanent International Court of Justice and as a national judge at the German-Polish and the German-Czechoslovakian Arbitral Tribunals and represented the German government in various cases before the Permanent International Court of Justice.⁴⁴ He now elaborates on the character of international law as an autonomous legal order that is not based on sovereignty, but on the "legal community" of states: "International law is a legal order for the community of states, a system of legal principles, legal institutions and legal rules that are interrelated in an organized system."⁴⁵ This can be understood as a further development of Heinrich Triepel's doctrine of the common will (*Gemeinwillen*).⁴⁶ In a remarkable way,



Viktor Bruns during a presentation in 1937 (Photo: AMPG, Bruns Viktor II 3).

⁴¹ Franz von Liszt (ed.), *Das Völkerrecht: systematisch dargestellt*, Berlin: Verlag Julius Springer 1925, IV-V.

⁴² S. esp. [André N. Mandelstam, Der internationale Schutz der Menschenrechte und die New-Yorker Erklärung des Instituts für Völkerrecht, HJIL 2 \(1931\), 335-377.](#)

⁴³ Ole Spiermann, *International Legal Argument in the Permanent Court of International Justice*, Cambridge: Cambridge University Press 2005, 292.

⁴⁴ Lange (fn 23), 540.

⁴⁵ Translated by the editor.

⁴⁶ [Heinrich Triepel, Völkerrecht und Landesrecht, Leipzig: C.L. Hirschfeld 1899](#), 32-33, 88 (this connection however, is not made explicit in his essay by Bruns, a long-time Berlin faculty colleague of Triepel)





transfers Carl Schmitt's idea of the relationship between the "written constitution" and the "German legal community" to the international legal order. "In the same way", the legal nature of treaties in the community of states cannot be inferred from the will of states to fulfil their obligations in individual cases, but only from the legal order of the states that have joined together to form a legal community: "The law of a legal community is all legal consequences and prerequisites resulting from the concrete order of this community."⁴⁷ However, Bruns does not take into account the significance of this legal order for the individual. He neither addresses the innovations of the Weimar Constitution in relation to international law nor the significance of contemporary international law beyond classical foreign relations.

The fact that there was a significant gap between "comparative public law" and "international law" becomes - admittedly retrospectively, with the benefit of hindsight - particularly obvious from the perspective of the openness to international law of the *Grundgesetz* (Basic Law). However, a research institute with more distance from politics would certainly have developed a different research programme. At the same time, one must bear in mind how short the Weimar years of the Institute were, how short Germany's membership of the League of Nations was - and how dominant the "struggle against Versailles" was for German international law scholarship. It was not the moment for the practical "completion of the *Genossenschaftsidee* [loosely: associational idea] in international law",⁴⁸ as envisaged by Preuß. Even though, as was recently recalled in the wake of the anniversary of the 1919 constitution, this idea would have theoretically lent itself also to a community order under international law: Just as the democratic constitution required the recognition of pluralism and the rule of law at home, it also demanded a new understanding of the state as one among many that had to co-operate. The theoretical and practical continuity of internal and external relationships is not reflected in the KWI director's essay on international law, but in the opening quote by the later Bauhaus director: "Trade union, co-operative, Lt., Inc., cartel, trust, and the League of Nations are the forms in which today's social conglomerations find expression [...]. Co-operation rules the world."

Translation from the German original: Sarah Gebel

⁴⁷ Bruns (n 11), 10-12, 1, 13, translated by the edito

⁴⁸ Schestag (fn 15), 399-403.

