



## Law and Power in Geneva. The KWI in the Debate over the New International Order

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*In the center Gustav Stresemann, to his left and right Aristide Briand (France), Emile Vandervelde (Belgium) and Austen Chamberlain (England) on the occasion of Germany's entry into the League of Nations in 1926 (BArch, Bild 102-08491 / Georg Pahl)*

Hans Wehberg felt he was staring into the ‘abyss’ of another world war.<sup>1</sup> Writing from Geneva in March 1933, as the National Socialists extended their power over the German state and its society, the pacifist legal scholar surveyed the broader ascendance of radical political forces directed against the established order and with it part of his life’s work—the League of Nations.

The Japanese invasion of Manchuria (September 1931-February 1932) had recently exposed the paralysing effects divergent political interests could have on the procedures for collective security. Despite the lack of agreement on concrete measures, for the first time in history, Wehberg noted, the international community of states speaking through the League had

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<sup>1</sup> *Hans Wehberg, Zusammenbruch des Völkerbundes?, Die Friedens-Warte* 33 (1933), 65-68, 65.





condemned the unlawful actions of a Great Power.<sup>2</sup> And still, the sense of failure was undeniable, a sense so ingrained in our own historical perception of the League's ultimate significance.

Wehberg joined an international rank of prominent politicians, diplomats, and scholars in debating this question and its implications amid a crescendo of crises. Had the League failed? Could it be saved through reform? Its legal order strengthened against a 'revival' of the old 'methods', which were 'not the methods of the League', in the formulation of Czechoslovak Foreign Minister Edvard Beneš?<sup>3</sup> Members of renowned associations and institutions of international law, including the Kaiser Wilhelm Institute for Foreign Public Law and International Law (*Kaiser-Wilhelm-Institut für ausländisches öffentliches Recht und Völkerrecht*) in Berlin, weighed in.

Viktor Bruns, the Institute's founding director, and by now one of the greatest German authorities of international law, thought that the moment had come to definitively expose the League's imperial foundations, how they had arrested the creation of a peaceful legal order. In this, Wehberg certainly agreed with him. The conclusions they drew, however, cleaved apart. They had taken different stances within the new departures of international law in the Weimar Republic, whose broader implications now fully emerged. Wehberg, with his politically progressive pacifist inclinations, sought to salvage the principle of 'peace through law' partially embodied in the League by advocating for the belated institutional recognition of the postulate of justice. Bruns, inclined to a practice-oriented legal perspective, was not convinced that the 'methods of the League' could still serve to dislodge its unjust foundations in the German interest.

The stakes of the debate on the failures of the League are familiar. Its longer history, reaching back across a decade to the contestation of the post-war foundations of a 'new international order', sweeping along Wehberg and Bruns, perhaps less so. In 1919, the charge of continuing the 'old methods' discredited by the war, albeit in an insidious new form, had been levelled against the former Allied and Associated Powers from Weimar.

## **'Ordering the World'**

In December 1918, Wehberg became a founding member of the German Union for a League of Nations (*Deutsche Liga für Völkerbund*). The association comprised a group of mostly liberal and left-leaning political, legal, and economic elites determined to find an international response to imperial collapse in Central Europe that might support the transition to a stable democratic order in the region. The revolutionary Council of People's Deputies, then the

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<sup>2</sup> Wehberg (Fn. 1), 66.

<sup>3</sup> Edvard Beneš, *The League of Nations: Successes and Failures*, Foreign Affairs, 11 (1932), 66-80, 73.





Weimar Coalition government, continued wartime efforts to constructively adapt Allied peace proposals based on American President Woodrow Wilson’s Fourteen Points, treating this as the binding foundation for a ‘just peace’ on the German side.

The Union for a League of Nations collaborated closely with the Foreign Office in these efforts. Reaffirming international law and encouraging international cooperation—and thereby also the creation of a League of Nations—was strategically prudent and politically expedient for the new government. Boldly, it proceeded with the expectation of German participation in ‘ordering the world’ on equal terms with other Great Powers.<sup>4</sup> Versailles, however, denied these ambitions. Germany was excluded from the League of Nations (although it joined the International Labour Organisation), the guardian of the new international order whose Covenant prefaced the peace treaty. This direct linkage ensured that the League remained central to all German efforts at revision, including those of the radical right predicated on its destruction.

## The ‘League of Versailles’



*Walther Schücking and Victor Bruns (undated, MPG Archive)*

Studies of the League dissecting these compromised origins proliferated in the Weimar Republic. Those with conservative views, among them Bernhard Wilhelm von Bülow, who led the Special Section for League of Nations Affairs at the Foreign Office, dismissed the ‘League of Versailles’ as an extension of the wartime alliance politics of the Allies that served to secure their political interests, territorial gains, and economic primacy.<sup>5</sup> It was the predominance of the Great Powers, institutionalised in the Council, where decisions were made in line with political rather than legal considerations that defined the League, he maintained. This had resulted in an ‘international oligarchy’ that ‘threatened’ the further ‘development of international law’, upon which Germany depended with its constrained military and economic capacities.<sup>6</sup> Even Wehberg and his long-term collaborator, the pacifist lawyer Walther Schücking, observed the League’s ‘Janus face’, one side bearing the ‘features of the imperial age that engendered the world war’, the other those of a liberal solidaristic future.<sup>7</sup>

For some time, the Union for a League of Nations retained a core of members who held onto their hope for this future, for the gradual creation of an interrelated constitutional and

<sup>4</sup> Ernst Jäckh, *Die Ordnung der Welt. Die Aufgabe des Friedens, Mitteilungen der Deutschen Liga für Völkerbund* 1 (1920).

<sup>5</sup> Bernhard Wilhelm von Bülow, *Der Versailler Völkerbund. Eine vorläufige Bilanz*, Berlin: W. Kohlhammer 1923, 14-16, 43.

<sup>6</sup> von Bülow (Fn. 5), 58; 66.

<sup>7</sup> Walther Schücking/Hans Wehberg, *Die Satzung des Völkerbundes*, vol. 1, Berlin, F. Vahlen 1931, 163.





international legal order guided by democratic principles and anchored in the League. Even members who did not share this progressive internationalist sensibility, however, saw in its institutions a ‘legal recourse’ (*Rechtsweg*) to adjust the peace treaty.<sup>8</sup> In the early years after the war, burdened by the struggle over war reparations, most Foreign Office officials, however, disagreed, insisting that revision was the precondition for any orientation towards the League.

They also invoked the law as the only recourse that remained, but it was to be deployed more narrowly in the German interest both in the ongoing technical elaboration of the peace treaty and its diplomatic refutation. This gradual reconfiguration of foreign policy relied on the rigorous legal expertise that was produced by an innovative array of emergent research institutes and associations of international law sustained to varying degrees by the state, public research organisations, private foundations and personal networks.<sup>9</sup>

Viktor Bruns, a professor of public and international law at the University of Berlin, began contemplating an institute of his own dedicated to legal research that could fulfil these novel requirements of the state. To raise the international stature of German legal practice and opinion, he envisioned a systematising, comparative approach to the law oriented towards practice and attuned to transnational debates. With support from the Foreign Office and the Kaiser Wilhelm Society, the foremost German research organisation, his Institute for Foreign Public Law and International Law was inaugurated in 1924, in the expectant climate of the negotiations over the Locarno Treaties. The Franco-Belgian occupation of the Ruhr Valley in 1923 had changed perceptions of the peace treaty, revealing its value as an ‘international guarantee’ of German sovereignty, as National Liberal Foreign Minister Gustav Stresemann had insisted, rather than merely its resented limitation.<sup>10</sup> The policy of rapprochement he pursued after the provisional resolution of the conflict led to German membership in the League with a permanent seat on the Council in 1926.

## Legitimizing the League

Under Bruns, the Institute advanced a programmatic conception of the international order as a legal order with its basis in the community of states.<sup>11</sup> While international law demarcated the domain of their self-directed freedom and action, rendering absolute notions of sovereignty

<sup>8</sup> Untitled position paper of the Union for a League of Nations (29 December 1919), BArch, N/2097/68, 2.

<sup>9</sup> A German Society for International Law (*Deutsche Gesellschaft für Völkerrecht*) had been founded in 1917. In 1920, the Institute for Foreign Policy (*Institut für Auswärtige Politik*) under the direction of the lawyer Albrecht Mendelssohn-Bartholdy made Hamburg a centre of international law alongside Kiel, whose university had already opened an Institute for International Law (*Institut für Internationales Recht*) in 1914, overseen by Theodor Niemeyer. Across German universities, international law burgeoned as a disciplinary subfield.

<sup>10</sup> [Reichstag 286. Sitzung. Sonnabend den 13. Januar 1923, 9423, Reichstagsprotokolle 1920/24,14, Verhandlungen des Deutschen Reichstags, Reichstag \(Weimarer Republik/Nationalsozialismus\) 1918-1942.](#)

<sup>11</sup> *Viktor Bruns*, *Völkerrecht als Rechtsordnung*, ZaöRV 1 (1929), 1-56.





defunct, its writ ended here, he held.<sup>12</sup> He insisted on the ‘boundaries’ between ‘state and international law’ against Wehberg and Schücking with their pacifist view but also Hans Kelsen and the Vienna School with their monistic view, who from different angles considered these boundaries ‘blurred’, particularly in the new ‘confederative’ forms of international organisation centred on the League.<sup>13</sup>

The Institute nonetheless contributed strongly to their incipient legitimation, not least with the legal practice of its members in the world of adjudicatory bodies.<sup>14</sup> This legitimation was complicated by deeper reservations concerning the foundations of the international order, constantly roiling the politics of the Weimar Republic. The League upheld some of its most disputed pillars—economic and military sanctions, the protection of national minorities, the oversight of mandates—and raised such sensitive questions about state sovereignty and its relation with international law. Their resonance was strong in the Weimar Republic, a precarious state beset by anxieties surrounding the perceived erosion of its sovereign power and the degradation of its status to an ‘object’ of international politics.<sup>15</sup> After the National Socialists took over, one of the first foreign policy decisions of the new regime was the declaration of Germany’s withdrawal from the League in October 1933.

### **The Crisis of the League and the ‘Requirements of the Law’**

In November 1936, the debate over a reform of the League reached the Kaiser Wilhelm Society. Bruns made his intervention in a talk held before the general assembly.<sup>16</sup> The National Socialist leadership had taken another step to dismantle the treaty frameworks of Versailles and Locarno in early March by violating the demilitarisation provisions for the Rhineland. Bruns argued that the ultimate cause of the League’s failure to prevent and counter the rising surge of such revisionist infractions lay deep in its past.

Since its twinned codification with the Treaty of Versailles, the League, Bruns elaborated, had been implicated in the treaty architecture of an inequitable post-war order that contradicted its

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<sup>12</sup> *Bruns* (Fn.11), 42-44; 49.

<sup>13</sup> *Wehberg/Schücking* (Fn. 7), 90.

<sup>14</sup> Privately, many members of the Institute remained sceptical about the League. As Carlo Schmid, head of the section for international law, noted in his memoirs, by the late 1920s he regarded it with a measure of grim disillusionment not as a site for the ‘progressive advancement’ of all states ‘under law’ but as a fractious assembly where the power political motives behind many initiatives were only ever thinly disguised. See: *Carlo Schmid, Erinnerungen*, Bern: Scherz 1979, 129.

<sup>15</sup> *Carl Schmitt* was a prominent exponent of this view, although it was shared to varying degrees and with varying historical-theoretical and ideological accentuations across the political spectrum. See his collection of essays *Positionen und Begriffe im Kampf mit Weimar—Genf—Versailles, 1923-1939*, Berlin: Duncker & Humblot 1988.

<sup>16</sup> The talk was published the following year in the institute’s journal: *Viktor Bruns, Bund oder Bündnis? Zur Reform des Völkerbundes*, *ZaöRV* 7 (1937), 295-312. There were several further contributions in the issue taking on the entangled question of a reform of the League and a comprehensive revision of the peace settlement from a historical perspective and with a comparable tenor.







own ‘organisational principles’. While it had been furnished with institutional arrangements for diplomacy, arbitration, and sanctions in the service of peace, the necessary means for a more ambitious ‘development and adjustment of the law’ itself in response to deeper structural sources of conflict between states and in accordance with the ‘most noble duty’ of member states ‘to create justice’ had been neglected.<sup>17</sup>

There were rudimentary avenues of redress, he conceded, such as Article 19 of the Covenant, which granted an advisory capacity to the Assembly in reviewing treaty arrangements and ‘international conditions’ that might become a threat to peace. The possibilities rooted here had, however, largely been left buried in the text. The collective security system of the League was, he concluded, ‘not a procedure concerned with law as such, with its realisation and protection’.<sup>18</sup>

Wehberg’s assessment of the international situation of 1936—the remilitarisation of the Rhineland, the fall of Ethiopia to Fascist Italy, the outbreak of civil war in Spain—was similar in its indictment of the League. Confronted with the possibility of its collapse, he pointed to the missed opportunity of transforming it into a more ‘dynamic’ organisation, an organisation that could adapt constructively to ‘the necessities of the moment’.<sup>19</sup> It remained ‘of the utmost importance that’ member states, foremost the ‘saturated states’, ‘developed a greater understanding for the requirements of the law’, he maintained, especially concerning ‘unjust conditions’. This could allow the League to move beyond ‘the defence of the status quo’ and through negotiated redress prevent further armed conflict.<sup>20</sup>

Bruns, however, was not convinced this shift was structurally possible. He argued that the recent disregard in Geneva for what he termed the relevant ‘material legal situation[s]’ that might compel a state to breach ordinary procedures for dispute resolution—situations in which it found itself in a ‘legitimate struggle for its existence’ or ‘against the denial or infringement of its most important rights’—was the inevitable consequence of a more systematic disregard following from the ‘power politics’ of the former Allies that had been reinvented in 1919 ‘in the guise of law’.<sup>21</sup> With this, he accommodated a more aggressive course of revision, suggesting that certain infractions could be justified as the restorative vindication of fundamental state interests and rights unacknowledged in the legal order.

As the League spiralled into irrelevance amid the violent ideological confrontation of the 1930s, many international lawyers in Germany came to understand this development—some also to

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<sup>17</sup> *Bruns* (fn. 16), 310.

<sup>18</sup> *Bruns* (fn. 16), 312.

<sup>19</sup> *Hans Wehberg*, *Die Reform des Völkerbundes*, *Die Friedens-Warte*, 36(1936), 205.

<sup>20</sup> *Wehberg* (fn. 19).

<sup>21</sup> *Bruns* (fn. 16), 299; 308; 312.



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embrace it—in similar terms, as anticipated in its beginnings, when the Allied victors, so they had argued for years, had sought to subject the law to their imperial ends.

