

Fourteen ways of looking back at the Treaty of Versailles[†]

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This article examines the idea of the Treaty of Versailles as a readily quantifiable corpus of provisions as set down in a readily identifiable document that was signed at the Palace of Versailles on 28 June 1919. It does so by recalling the pre-history to that peace that stretches as far back as US President Woodrow Wilson's Fourteen Points of January 1918, for the German Government accepted these Fourteen Points as well as subsequent pronouncements of President Wilson as the basis for the peace that ended the Great War. Through a close engagement with diplomatic correspondence from October and November 1918, the article considers how impressions came to form that a 'contract' had been made with the enemy (John Maynard Keynes) by the time of the Armistice of Compiegne of November 1918—an apparent 'charter for our future activity' (Harold Nicolson) or a localized *lex pacificatoria* for its time. The article explores the amenability of each of the Fourteen Points to international normativity and, in its final section, it provides a broader account of how this set of positions shaped Germany's official response to the draft treaty ('Observations of the German Delegation on the Conditions of Peace') that was released in May 1919.

I

With its forbidding 15 parts, 440 articles, a vast expanse of integrated annexes as well as two protocols,¹ the Treaty of Versailles of June 1919 used its opening words to recall that the Imperial German Government had made a 'request'

[†] Dedicated with profound appreciation to the memory of George Mduzuzi Mbele (1931-1994).

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¹ Treaty of Peace between the Allied and Associated Powers and Germany, 28 June 1919 (entered into force 10 January 1920). The first of these protocols—dated 28 June 1919, the date of the Treaty of Versailles itself—was agreed between the High Contracting Parties of the Treaty of Versailles (that is, including Germany); the second Protocol—signed by Germany on 10 January 1920—'placed on record that the following obligations, which Germany had undertaken to execute by the Armistice Conventions and supplementary Agreements, have not been executed or completely fulfilled' and appears to have been signed by Germany and Germany alone.

for an armistice for the Great War, that this request had been granted at Compiègne on 11 November 1918,² by the Principal Allied and Associated Powers of the US, the British Empire, France, Italy and Japan,³ and that, in consequence, the war that had originated on 28 July 1914 was to be ‘replaced by a firm, just and durable Peace’ (as announced in the preamble). The Treaty of Versailles, of course, was to contain the essential detail of and for that Peace, and it finally entered into force upon the exchange of ratifications on 10 January 1920.⁴ Much speculation had accompanied the selection of the actual paper for the inscription of the final text of the treaty in preparation for its signature in June 1919, with it reported that Torinoko (‘bird’s egg’) paper from Japan had been chosen over and above Whatman handmade paper made in Kent—supposedly to reflect the projected durability of the treaty, the ambition for its permanence.⁵

And so it was that ‘Versailles’ came to life as a singular idea, an organizing motif, a convenient abbreviation for the outcome of the marathon deliberations that had occupied much of the world’s headlines between January and June 1919—when, in truth, it was ‘always much more than that’,⁶ for those six heady months had formed part of what might more faithfully be described as a plurality of peaces all told. War, after all, had to be formally brought to heel with Austria (Treaty of St. Germain-en-Laye), Bulgaria (Treaty of Neuilly), Hungary (Treaty of Trianon) as well as the Republic of Turkey (Treaty of Sèvres),⁷ though it is important to remember in all of this that Versailles had not, in point of fact, served as the venue for those deliberations as they had occurred at the Quai d’Orsay, the French Ministry of Foreign Affairs, on the left bank of the Seine. Rather, the Palace of Versailles had provided the stage for the act of the signing of the historic treaty, and this explains why it is so caught up in the optic, but also in the mythos, of that moment of world history. ‘Versailles’ had to contend with a slice of its own past as it did so, for it

2 On which, see, especially, SW Halperin, ‘Anatomy of An Armistice’ 43 *Journal of Modern History* (1971) 107.

3 Now joined by Belgium, Bolivia, Brazil, China, Cuba, Ecuador, Greece, Guatemala, Haiti, the Hedjaz, Honduras, Liberia, Nicaragua, Panama, Peru, Poland, Portugal, Romania, the Serb-Croat-Slovene State, Siam, Czecho-Slovakia and Uruguay as the Allied and Associated Powers.

4 ‘State of War Ended at Last by Exchange of Ratifications in Historic Clock Room’, *International Herald Tribune*, 11 January 1920.

5 ‘Preparations at Versailles’, *The Times*, 26 June 1919. Though, see D Hunter, *Papermaking: The History and Technique of An Ancient Craft* (Dover Publications, 1978) 55 (claiming this decision was made for ‘political reasons’).

6 M MacMillan, *Paris 1919: Six Months that Changed the World* (Random House, 2002) xxvi.

7 The last of these was revised as the Treaty of Lausanne, 24 July 1923 (entered into force 6 August 1924).

was there, at that very venue, that the preliminaries for peace had been made in February 1871 in respect of the 1870-71 Franco-Prussian War and in advance of the Treaty of Frankfurt in May 1871.⁸

There is, however, a further but less well-rehearsed sense in which ‘Versailles’ has come to form an essentialized rubric in our minds and it is this topic that I wish to open up and to explore in some detail in this contribution. That relates to the idea of ‘Versailles’ as a summation of the entire corpus or contents of the peace that was signed, much to the wider world’s relief, on 28 June 1919—the fifth anniversary of the assassination of the Archduke Franz Ferdinand on the streets of Sarajevo. To be sure, at one level of analysis, there is nothing remarkable in returning to the Treaty of Versailles and regarding it as a treaty of peace like any other: it had at its core the ‘restoration of the condition of peace between the former belligerents’, such that ‘all rights and duties which exist in time of peace between the members of the family of nations are *ipso facto* and at once revived between the former belligerents’.⁹ As an international convention, ‘Versailles’, then, rightfully takes its place alongside the other peace treaties coming forward from the Great War,¹⁰ pitted on the continuum from war to armistice and, then, from armistice to eventual peace.¹¹ Of course, that point of focus prioritizes the form and function of ‘Versailles’ as a treaty of peace, but, in this contribution, the intellectual interest lies elsewhere; it is to examine the sense of ‘Versailles’ as a readily quantifiable corpus of provisions as set down in a readily identifiable document—as if, for the purposes of international law, there have always been four corners and only four corners to the exercise of retrieving ‘Versailles’ and its laws.

This image is quick to impress itself on our minds as it would for any other treaty, but it is also an image that has to contend with the idea of ‘Versailles’ as an intricate ordering of normativity that stretches beyond the confines of that convention at least as far back as the Fourteen Points that US President Woodrow Wilson delivered to a Joint Session of the US Congress in January 1918. In this rendering of events, there is an indispensable pre-history to ‘Versailles’ and its laws that begins to assert itself—one that has somehow

8 C Tomuschat, ‘The 1871 Peace Treaty between France and Germany and the 1919 Peace Treaty of Versailles’, in R Lesaffer (ed.), *Peace Treaties and International Law in European History: From the Late Middle Ages to World War One* (Cambridge UP, 2004) 382.

9 L Oppenheim, *International Law: A Treatise*, vol. 2 (*War and Neutrality*) (Longmans, Green, & Co., 1906) 285 (§272).

10 See Treaty of St. Germain-en-Laye; Treaty of Neuilly; Treaty of Trianon, and Treaty of Sèvres. See also Treaty of Lausanne.

11 Usefully on this point, PJ Lyons, ‘Truce, Cease-Fire and Armistice: The Legal Nuances’, *New York Times*, 23 February 2016, A9. See also AC Umbreit, ‘The Peace Notes—The Armistice—The Surrender’ 3 *Marquette Law Review* (1918) 3.

come to be lost or subdued by the bludgeon of time, quite possibly overwhelmed by the single inaugural peace of those days. Importantly, this was no ordinary pre-history that simply rounds off or completes the narrative—but one that was argued to be as integral to the peace as ‘Versailles’ was itself. It is an account that invariably presents ‘Versailles’ as a much more complex affair, gathering in nuance and dimensionality even before signatures were affixed to the Armistice of Compiegne in November 1918. ‘Versailles’, then, is neither the singular outcome nor culminating text that it has so popularly become in the public imagination, in the collective mind’s eye; it is, instead, a summation of the normative mechanics for peace that includes, but certainly is not limited to, the contents that were engrossed on that Torinoko paper for the necessary ceremonials of June 1919. To connect more fulsomely with this detail, we shall first return to the Armistice itself and try to understand more of what it envisaged and how it came to be signed in the hours before sunrise on 11 November 1918. We shall then comb through the diplomatic correspondence that served as the immediate backdrop to the conclusion of the Armistice. All the while, we are treading further and further back into time, collecting and digesting the threads of the references made to Wilson’s Fourteen Points of January 1918, amongst other things.

II

In December 1919, six months after the adoption of the Treaty of Versailles, Macmillan Press published *The Economic Consequences of the Peace* by John Maynard Keynes, in which he had warned of ‘the risk of completing the ruin which Germany [had] beg[un], by a peace which, if it is carried into effect, must impair yet further, when it might have restored, the delicate, complicated organisation, already shaken and broken by war, through which alone the European peoples can employ themselves and live’.¹² On this view of things, much depended on the essential design of the peace, with Keynes writing of ‘the task of the peace conference’ to ‘honour engagements and to satisfy justice; but not less to re-establish life and to heal wounds’—‘to be dictated’, he thought, ‘as much by prudence as by the magnanimity which the wisdom of antiquity approved in victors’.¹³ He went on to sketch ‘the actual character of the peace’ that was demanded of the men and of the moment of that time.¹⁴

¹² JM Keynes, *The Economic Consequences of the Peace* (Macmillan, 1919) 1.

¹³ Ibid 16.

¹⁴ Ibid—his overall concern was ‘not with the justice of the treaty’ but ‘with its wisdom and with its consequences’ (ibid 40)—in a work that has been described as ‘a furious tirade against autocracy,

Although much of *The Economic Consequences of the Peace* is taken up by ‘this most perilous macroeconomic muddle’ that had befallen the peacemakers as they congregated in Paris,¹⁵ it is some of the observations appearing in the fourth chapter of that enduring work (notably entitled ‘The Treaty’) that call out for our attention.¹⁶ After having identified the ‘[t]wo rival schemes’ in play—Wilson’s Fourteen Points and the Carthaginian peace of French Prime Minister Georges Clemenceau¹⁷—Keynes turned his mind to the fact that the ‘peace’ had not arisen as the result of unconditional surrender on the part of Germany, but, rather, ‘on agreed terms as to the general character of the peace’; or so he insisted.¹⁸ For Keynes, a more intimate account and understanding of the precursors of this peace was necessary, ‘for in the minds of many Englishmen at least it has been a subject of a very great misapprehension’.¹⁹ What was this misapprehension? Why was it so great? And why did it compel this kind of remark? Keynes went on to articulate this ‘very great misapprehension’ thus:

Many persons believe that the armistice terms constituted the first contract between the Allied and Associated Powers and the German government, and that we entered the conference with our hands free, except so far as these armistice terms might bind us. This was not the case. To make the position plain, it is necessary briefly to review the history of the negotiations which began with the German Note of 5 October 1918, and concluded with President Wilson’s Note of 5 November 1918.²⁰

This, then, was not an armistice born of unconditional surrender: it had apparently come with its own terms, and deliberately so, much as has been maintained for the Peace of Versailles itself. For it was observed in the third edition of Lassa Oppenheim’s treatise, published soon after these developments had all passed in 1920: ‘[i]n the diplomatic correspondence before the armistice

war, and weak politicians’: ZD Carter, *The Price of Peace: Money, Democracy, and the Life of John Maynard Keynes* (Random House, 2020) 95.

15 J Kirshner, ‘The Man Who Foresaw the Nazis’, *New York Times* (Int’l Ed.), 7 December 2019, 1.

16 Keynes (1919). And to a certain extent, too, the fifth chapter (‘Reparations’) where Keynes wrote of the ‘terms’ of President Wilson’s speech to Congress of 11 February 1918 as ‘an express part of the contract with the enemy’ (71); of the terms of the Note of 5 November 1918 as ‘binding’ (72)—and of ‘a strict interpretation of our *engagements*’ (73) (emphasis added).

17 A dichotomy that is developed by B Miller Unterberger, ‘The Treaty of Versailles: Carthaginian Peace or Pragmatic Compromise?’ 14 *Reviews in American History* (1986) 398.

18 Keynes (1919) 35.

19 *Ibid.*

20 *Ibid.*

with Germany, general principles had been laid down for the restoration of peace; the main task of the Peace Conference at Paris was to apply them in detail'.²¹ Indeed, Harold Nicolson commenced his much-admired *Peacemaking 1919* (1933) by recounting the 'thorny path' posed by the question of 'whether the triangular correspondence which took place in October [1918] between Washington, Berlin and the capitals of the Associated Powers constituted a contract in the legal sense of the term'.²² Within the law of treaties, this would usually be referred to as the *pactum de contrahendo* or *pactum de negotiando*,²³ a prefatory arrangement that carries the force of law designed to govern what is to come next *inter partes*.

To be sure, there is not much, if anything, that can be gained from the text of the Armistice of Compiègne itself in respect of the presence or otherwise of such precursors, though there were important traces of the formalized peace that was then anticipated ('[t]he return of German prisoners of war shall be settled at the conclusion of the peace preliminaries' (Article X); '[t]his gold is to be delivered in trust to the Allies until peace is concluded' (Article XIX)).²⁴ Indeed, based on the stipulations of the Regulations annexed to the 1907 Hague Convention (IV) Respecting the Laws and Customs of War on Land, this is precisely what the armistice was there to do.²⁵ Concluded between Marshall Ferdinand Foch, Commander-in-Chief of the Allied Armies and acting in the name of Allied and Associated Powers, with Admiral Rosslyn Wemyss, First Sea Lord, on the one hand, and Matthias Erzberger, German State Secretary and Vice Chancellor and President of the German Delegation, with Count von Alfred Oberdorff (German Foreign Ministry), Major General

21 And edited by Ronald F Roxburgh upon the death of Oppenheim in October 1919: L Oppenheim, *International Law: A Treatise*, vol. 1 (*Peace*), 3rd ed. (Longmans, Green & Co., 1920) 717 (§568d).

22 H Nicolson, *Peacemaking 1919* (Constable & Co., 1933) 10. Nicolson also put it another way: 'Did the Germans lay down their arms in reliance upon a pledge given them by their enemies that the ensuing peace terms would conform absolutely to the twenty-three principles enunciated by President Wilson? If so, did the Allied and Associated Powers observe or violate that pledge once Germany was at their mercy?'

23 See AD McNair, *The Law of Treaties: British Practice and Opinions* (Columbia UP, 1938) 56-57; A Aust, *Modern Treaty Law and Practice*, 3rd ed. (Cambridge UP, 2013) 26.

24 The terms of the Armistice had been drafted by the Supreme War Council: Nicolson (1933) 12.

25 Article 36 ('An armistice suspends military operations by mutual agreement between the belligerent parties. If its duration is not defined, the belligerent parties may resume operations at any time, provided always that the enemy is warned within the time agreed upon, in accordance with the terms of the armistice'). The Armistice of Compiègne came with two annexes: one operational-izing the evacuation of the invaded territories of Belgium, France, Luxembourg and Alsace-Lorraine (Article II of the Armistice), as well as the evacuation of the Rhine (Article V of the Armistice) and the surrender of war material (Article IV of the Armistice); and the other on conditions regarding communications, railways, waterways, roads, river and sea ports, and telegraphic and telephonic communications.

Detlev von Winterfeldt (German Army) and Captain Ernst Vanselow (German Navy) on the other,²⁶ the Armistice contained a series of staccato instructions—cessation of hostilities by land and in the air six hours after the signing of the armistice; immediate evacuation of the invaded countries so ordered as to be completed within fifteen days from signature; repatriation of all inhabitants of Belgium, France and Luxembourg; surrender of munitions and so forth—with the occasional doff made to questions of enforcement.²⁷

All of this said, it should be recalled that the German Plenipotentiaries to the Armistice had been instructed by their Government to append a short Declaration to the Armistice that consisted of a mere six paragraphs, the second of which recognized ‘that in certain points regard has been paid to their suggestions’. This is not something that could have been ventured for the Peace of Versailles the following year, of course,²⁸ and it meant that ‘[t]hey can therefore regard the comments made on November 9, on the conditions of the armistice with Germany and the answers handed to them on November 10, as an essential condition of the whole agreement’. This is the clearest outward indicator we have, from one event to the next, of the exchanges that had accompanied the Armistice, and how keenly felt the various expectations were (the language of ‘essential condition’ is especially strong).²⁹ The Declaration is also significant for the fact that, although the German Government pledged ‘all its power to take care that the duties imposed upon it shall be carried out’,³⁰ it sounded a raw note of concern about the practicality of what was being envisaged by the other side: ‘no doubt [must] exist on the point that in particular the short time allowed for evacuation, as well as the surrender of indispensable means of transport, threatens to bring about a state of things

26 Importantly, the US did not become one of the High Contracting Parties of the Treaty of Versailles—and the relationship had to await the Treaty between the United States and Germany Restoring Friendly Relations, done at Berlin on 25 August 1921.

27 Reprisals were mentioned in Article VIII, as was repudiation in the final clause of the Armistice (Article XXXIV). Furthermore, an Addendum was reached later on the same day of the Armistice, that the following condition be added to its clauses: ‘In case the German ships are not handed over within the periods specified, the Governments of the Allies and of the United States shall have the right to occupy Heligoland to insure their delivery’. Of course, the Hague Regulations also dealt with armistice violations as a general matter, specifically Articles 40 and 41.

28 Though it is quite telling that, in the first paragraph of the Declaration, reference was made to the language of ‘imposition’ (‘[t]he German Government will naturally endeavour with all its power to take care that the duties imposed upon it shall be carried out’). See also Article XIX of the Armistice on financial clauses (‘the following financial conditions are imposed’).

29 Nicolson, in fact, opens up his interrogation by referring to ‘the legal basis of the Peace Treaties’. Nicolson (1933) 10. See also *ibid* 13 (‘the pre-armistice agreement under which Germany consented to surrender’).

30 *Ibid*.

which . . . may render impossible the further fulfilment of the conditions'.³¹ And the Plenipotentiaries repeated once again, 'with all possible emphasis' they said, that 'the carrying out of this agreement must throw the German people into anarchy and famine. According to the declarations which preceded the armistice, conditions were to be expected which, while completely insuring the military situation of our opponents, would have ended the sufferings of women and children who took no part in the war'.³²

What exactly had occurred in the days before the signing of the Armistice? It is on 7 November 1918 that the German delegation (accompanied by two interpreters, Hauptmann Geyer and Rittmeister von Helldorf) crossed the lines into French territory in order to reach the Forest of Compiègne, 60 kilometres north of Paris close to the small village of Rethondes, to meet the British and French officers that were awaiting them there.³³ This they did on the following day, in a railway carriage that had been converted into a makeshift conference room,³⁴ though, with the terms already devised by the Supreme Allied War Council from their base at Versailles,³⁵ there is scope to wonder about the possibilities for any genuine exercise of negotiation in circumstances where one side had so emphatically begun to seize the upperhand.³⁶ Even so, anticipation had reached fever-pitch with rumours rife that the armistice had indeed been reached over those two days, with 'false armistice celebrations' erupting in cities throughout the globe.³⁷ A sense of

31 Indeed, it had commenced with the statement that '[t]he German Government will naturally endeavour with all its power to take care that the duties imposed upon it shall be carried out'.

32 For the Armistice had provided that '[t]he existing blockade conditions set up by the allied and associated powers are to remain unchanged' (Article XXVI). Article XXVI did go on to specify that '[t]he Allies and United States contemplate the provisioning of Germany during the armistice as shall be found necessary'—a clause that was added only after the protestations of the German delegation: ME Cox, *Hunger in War and Peace: Women and Children in Germany, 1914-1924* (Oxford UP, 2019) 55.

33 These included General Weygand (Chief of Staff), Admiral Sir George Hope (Deputy First Sea Lord), Captain Jack Marriott (Naval Assistant to the Chief of Naval Staff) and two interpreters—Lieutenant Laperche and Commander Walter Bagot.

34 The carriage was Compagnie Internationale des Wagons-Lits (CIWL) No. 2419D. Adolf Hitler insisted that this would be the venue of choice for the signing of the Armistice on 22 June 1940 between Nazi Germany and the Third French Republic.

35 Nicolson (1933) 12.

36 Consider, especially, the resume of obligations that Foch shared with Prime Minister Clemenceau in October 1918: M Foch, *The Memoirs of Marshall Foch*, trans. Col T Bentley Mott (Doubleday Doran & Co., 1931) 527.

37 WG Dudley, *False Armistice Celebrations* (photograph, 1918). Celebrations had spilled onto the streets from Whang-arei to Invercargill in New Zealand—with Dr Joseph Frengley, Auckland's Acting Chief Medical Officer, expressing concern that these developments might exacerbate the transmission of the Spanish influenza. The Government of Prime Minister William Massey moved



Figure 1. 'Armistice Accepted. Berlin, 8 November. The Entente ultimatum presented by negotiators is accepted'. *Leipzig Court Journal*.^{VC} Deutsches Historisches Museum/S Ahlers

this intensity of emotion carried through to the supplement to the *Leipzig Court Journal* which read, in an arresting graphic that is reproduced here, 'Armistice Accepted. Berlin, 8 November. The Entente ultimatum presented by negotiators is accepted' (Figure 1).

to dispel the news of the armistice as untrue, but the Mayor of Feilding declared 'the fact [that the news] was not official was no guarantee it was not true'. 'Armistice Day: False Armistice', *New Zealand History*, <https://nzhistory.govt.nz/war/armistice-day/false-armistice>.

The reality, of course, was otherwise. Matthias Erzberger, who headed the German delegation to France, had been dispatched by the Chief of the German General Staff Paul von Hindenberg with the words ‘Go with God and try to get as much as you can’.³⁸ We also have David Lloyd George’s memoirs of what transpired on initial approach:

‘What do you want, gentleman?’ asked Foch. ‘Your proposal for an armistice’, they replied. ‘Oh, we’re not making any proposals for an armistice’, said Foch. ‘We are quite happy to go on fighting’. The German delegates looked at one another. ‘But we must have terms’, they protested. ‘We cannot continue the conflict’. ‘Ah! You have come to ask for an armistice? That is a different thing!’³⁹

The terms of the armistice were duly shared with them by Foch,⁴⁰ together with an ultimatum for signature within 72 hours: the severity of the terms, though, meant that the German delegation requested permission to communicate with their Government for further instructions.⁴¹ This was granted, ‘but there was no one to gainsay them’, for Kaiser Wilhelm II had chosen to abdicate on 9 November.⁴² Word was nevertheless telegraphed back to the Forest

38 L Marlowe, ‘First World War’s Final Hours: A French Bugler Sounded the Ceasefire at 11am’, *Irish Times*, 10 November 2018. According to Bernard Letemps, a retired engineer and reserve artillery officer and President of the Association of the Armistice Memorial, Hindenberg should have led the German delegation to France but ‘washed his hands of it, like Pontius Pilate’. Ibid. Erzberger was assassinated in August 1921 in Bad Griesbach in the Black Forest for his role in the armistice. J Ryan, ‘Matthias Erzberger’ 10 *Studies: An Irish Quarterly Review* (1921) 505.

39 D Lloyd George, *War Memoirs of David Lloyd George*, vol. 6 (Ivor Nicholson & Watson, 1936) 3321. On the centennial anniversary of the Armistice, Adam Hochschild has written that ‘the Armistice was not an armistice; the Allies, in effect, demanded—and received—a surrender. Yet German civilians had no idea their vaunted military was starting to crumble. Their ignorance was a fateful result of unrelenting propaganda’. A Hochschild, ‘The Eleventh Hour’, *New Yorker*, 5 November 2018, 28, 31.

40 Foch relates in his memoirs that, parallel to the diplomatic correspondence then occurring between Germany and the US, he took the initiative to send to Prime Minister Clemenceau on 8 October 1918 ‘a résumé of the obligations which, in my opinion, should be imposed upon our foe “in case the question arose of stopping hostilities, even momentarily”’; there were three essential obligations (followed by six supplementary obligations): liberation of the countries which have been invaded; assurance of a suitable military base permitting pursuit of the war until the enemy’s forces were destroyed and the taking of securities for reparations. See Foch (1931) 527.

41 Lloyd George (1936) 3322 (‘[t]he terms, in fact, amounted to a demand for Germany’s utter surrender, on a scale which would leave her quite defenceless and incapable of undertaking any resistance to whatever peace terms might be imposed’); also 3324 (‘the conditions were very far-reaching’).

42 Again, Lloyd George: ibid 3323 (‘[t]he Kaiser, Hindenburg and [Erich] Ludendorff First Quartermaster-General of the German General Staff] rolled into one would not make a single Frederick the Great who could mobilise and magnetise all the resources of a hard pressed and exhausted nation to struggle triumphantly against the odds’).

of Compiègne in good time with appropriate authorization for Erzberger and his colleagues to sign what had been placed before them,⁴³ and this duly occurred at around 5 o'clock French time on 11 November. The Armistice would take effect some six hours later with an initial duration of thirty-six days,⁴⁴ and Captain Marriott recorded that once the formalities had been dispensed with, '[w]e then had a glass of port and went for a walk in the Forest which was wonderfully soothing after our busy night'.⁴⁵

It is not possible to grasp the full meaning of this sequence of events without stepping even further back into the warp of time and engaging more of the diplomatic preliminaries that had come to occupy much of the argumentative thrust of *The Economic Consequences of the Peace* and of *Peacemaking 1919*. It now seems appropriate to consider in more detail the aforementioned Notes of October and November 1918 and the plan is to deal with each of these in turn.

The first of these Notes had been authored by Prince Maximilian of Baden, the German Imperial Chancellor, for the attention of President Wilson, and it was dated 5 October 1918.⁴⁶ It is significant for our purposes because it makes plain the 'three-cornered negotiation' that had defined the approach leading up to the Armistice,⁴⁷ and, as the opening salvo of this run of diplomatic correspondence, it put front-and-centre the 'program' that Wilson had set forth in his Fourteen Points of January 1918:

The German Government requests the President of the United States of America to take steps for the restoration of peace, to notify all belligerents of this request, and to invite them to delegate plenipotentiaries for the purpose of taking up negotiations. The German Government accepts, as a basis for the peace negotiations, the

43 This appears to have happened later on the day of 10 November 1918, and came from the (new) Imperial Chancellor Friedrich Ebert (who had succeeded Maximilian von Baden the previous day).

44 Article XXXIV(1). This was prolonged and supplemented on 13 December 1918, 16 January 1919, and 16 February 1919.

45 'History in Close-Up: An Extraordinary Eyewitness Record of the Signing of the Armistice', *Christie's Auctions & Private Sales*, 9 December 2018, <https://www.christies.com/features/Signing-the-Armistice-to-end-the-war-to-end-all-wars-9527-1.aspx> (reporting, also, that on first meeting the German delegation, the French chief of staff was suddenly paralyzed by a point of etiquette—how, 'from a point of view of courtesy, do you receive the representatives of a country with whom you have been engaged in a war for more than four years?')

46 Made 'after many anxious telephone messages to German Headquarters'. Nicolson (1933) 11.

47 MacMillan (2002) 19. And very much facilitated by Colonel Edward M House (known colloquially as 'Colonel House'): I Floto, *Colonel House in Paris: A Study of American Policy at the Paris Peace Conference, 1919* (Universitetsforlaget, 1973).

program laid down by the President of the United States in his message to Congress of January 8, 1918, and in his subsequent pronouncements, particularly his address of September 27, 1918. In order to avoid further bloodshed the German Government requests to bring about the immediate conclusion of a general armistice on land, on water, and in the air.⁴⁸

Importantly, therefore, it had been the German side that had spearheaded the initiative for ‘the restoration of peace’,⁴⁹ a move explained by the epic losses it had come to sustain over those most recent months of the war, as well as thousands of troop desertions and the surrender of two of its major allies, the Ottoman Empire and the Austro-Hungarian Empire.⁵⁰ There had also been trouble at home.⁵¹ Equally importantly is the fact that the communication had been addressed first and foremost to the US, no doubt because of the general feeling that Wilson’s Fourteen Points held out greater favour for Germany’s prospects and future well-being over the long term,⁵² and, in this, it is quite noticeable that there was a concerted attempt to infuse the Fourteen Points with some measure of legal tractionability or ‘law-ness’.⁵³ The frequent variations of the idiom of contractuality in the above passage (‘request’ and ‘requests’, ‘accepts, as the basis for the peace negotiations’) should not be

48 Initially submitted to Friederich Oederlin, the Swiss *chargé d'affaires* in Washington DC, for transmission to President Wilson: JV Fuller (ed.), *Papers Relating to the Foreign Affairs of the United States, 1918, Supplement 1, The World War, Volume I* (US Govt. Printing Office, 1933) 338-39 (File No. 763.72119/2113). See, further, ‘Germany Asks Peace on Wilson’s 14 Points’, *San Luis Obispo Daily Telegram*, 6 October 1918.

49 It has to be remembered, too, that President Wilson had issued his own Note of 18 December 1916, for peace, suggesting ‘that an early occasion be sought to call out from all the nations now at war such an avowal of their respective views as to the terms upon which the war might be concluded and the arrangements which would be deemed satisfactory as a guaranty against its renewal or the kindling of any similar conflict in the future as would make it possible frankly to compare them’. See JV Fuller (ed.), *Papers Relating to the Foreign Relations of the United States, 1916, Supplement, The World War* (US Govt. Printing Office, 1929) 97-98 (File No. 763.72119/230a).

50 As recounted by JE Persico, *11th Month, 11th Day, 11th Hour: Armistice Day 1918, World War I and Its Violent Climax* (Hutchinson, 2004) 305. See also K Schwabe, ‘Germany’s Peace Aims and the Domestic and International Constraints’, in MF Boemeke, GD Feldman & E Glaser (eds), *The Treaty of Versailles: A Reassessment After 75 Years* (Cambridge UP, 1998) 37, 40-41; MacMillan (2002) 19.

51 Inspired by the Russian Revolution of October 1917: the full headline of the *New York Times* on 11 November 1918 read: ‘Armistice Signed, End of the War! Berlin Seized by Revolutionists; New Chancellor Begg for Order; Ousted Kaiser Flees to Holland’.

52 See MacMillan (2002) 19. It should be recalled, for it is often missed, that this speech is recorded as ‘Address to A Joint Session of Congress on the Conditions of Peace’. See also AS Berg, *Wilson* (GP Puntam’s Sons, 2013) 471.

53 I am grateful to one of the anonymous readers of the *Review* for the suggestion of this term.

missed.⁵⁴ It also stands out that the German Government did not limit itself to the Fourteen Points ‘as a basis for peace negotiations’, for they made mention, too, of ‘subsequent pronouncements, particularly [Wilson’s] address of September 27, 1918’. That address had been delivered at the Metropolitan Opera House in New York City, where the President had intimated that ‘it will be necessary that all who sit down at the peace table shall come ready and willing to pay the price, the only price, that will procure it’—and that that price ‘is impartial justice in every item of the settlement, no matter whose interest is crossed’.⁵⁵

Taking general stock of the state of public international law on peacemaking then in existence, it is perhaps not surprising that there was this yearning for some sort of framework to help configure the eventual bonds of peace: Margaret MacMillan has written rather evocatively that ‘[i]n the first months of the peace [conference] the Germans clutched the Fourteen Points like a life raft, with very little sense that their victors might not see things the same way’.⁵⁶ The idea almost certainly seems to have been to mark out a baseline constitutional metric for the conclusion of peace as it was then unfolding—a localized *lex pacificatoria* for its time, if you will.⁵⁷ And this does stand to reason: there was an obvious concern to stave off the worst excesses of conquer-or’s (or, here, conquerors’) writ, but there were also some haunting precedents in tow—set by Prussia and Germany respectively, no less—of the Treaty of Frankfurt of May 1871 and the Treaty of Brest-Litovsk of March 1918.⁵⁸ And,

54 For Keynes, ‘[t]he nature of the contract’ resulting from these exchanges ‘is plain and unequivocal’. Keynes (1919) 37.

55 Reproduced in Fuller (ed.) (1933) 316-21.

56 MacMillan (2002) 461.

57 In deference to C Bell’s *On the Law Of Peace: Peace Agreements and the Lex Pacificatoria* (Oxford UP, 2008).

58 See, further, MacMillan (2002) 161 (also mentioning the Treaty of Bucharest of May 1918, which ‘turned R[o]mania into a German dependency’). Note, too, Germany’s response to President Wilson’s call for ‘a peace conference between the belligerents’ of 18 December 1916 (though ‘not prepared to publish any peace terms at present, because our enemies have published such terms which aim at the dishonour and destruction of Germany and her allies’). However, as an act of confidence in President Wilson, it was thought prudent to inform him ‘personally of the terms under which we would have been prepared to enter into negotiations’:

- restitution of the part of Upper Alsace occupied by the French;
- gaining of a frontier which would protect Germany and Poland economically and strategically against Russia;
- restitution of colonies in [the] form of an agreement which would give Germany colonies adequate to her population and economic interest;
- restitution of those parts of France occupied by Germany under reservation of strategical and economic changes of the frontier and financial compensations;

alongside treaties of peace, subjugation was considered to be one of '[t]he regular modes of termination of war',⁵⁹ so there was a picture of even further bleakness for Germany if the hostilities were simply let to run their course.⁶⁰ These were the unpalatable options on the table as 1918 wound to its close, with Kaiser Wilhelm II found staring at the enormity of Elmer Andrews Bushnell's staircase to peace from October 1918—where, let it be noted, the Fourteen Points had come to be lodged as 'principles' for peace (Figure 2).

It was on 8 October 1918 that President Wilson responded to the German Chancellor with a Note written on his behalf by Robert Lansing, the US Secretary of State, which sought clarification 'of the exact meaning of the Note of the Imperial Chancellor'.⁶¹ This effectively involved three questions whose answers were 'vital from every point of view'. The first of these concerned whether the German Government accepted the terms laid down by Wilson in January 1918 and in subsequent addresses and that 'its object in entering into discussions would be only to agree upon the practical details of their application'. The second was a matter of good faith since Wilson advised that he 'would not feel at liberty to propose a cessation of arms to the Governments with which the Government of the United States is associated against the Central Powers so long as the armies of these powers are upon their soil'.⁶² Third, and finally, the President felt 'justified in asking whether the

- ~~restoration of Belgium under special guaranty for the safety of Germany which would have to be decided on by negotiations with Belgium;~~
- economic and financial mutual compensation on the basis of the exchange of territories conquered and to be restituted at the conclusion of peace;
- compensation for the German business concerns and private persons who suffered by the war; abandonment of all economic agreements and measures which would form an obstacle to normal commerce and intercourse after the conclusion of peace, and instead of such agreements reasonable treaties of commerce;
- the freedom of the seas.

Reproduced in JV Fuller (ed.), *Papers Relating to the Foreign Relations of the United States, 1917, Supplement 1, The World War* (US Govt Printing Office, 1931) 35 (File No. 763.72119/451¹/₂).

59 Oppenheim (1906) 275 (§262) (which occurred 'when a belligerent, after having annihilated the forces and conquered the territory of his adversary, destroys his existence by annexing the conquered territory': *ibid* 278 (§264)). It was also listed as one of the modes of acquiring territory: Oppenheim (1905) 267 (§211).

60 With Prussia's treatment in 1866 of the Kingdom of Hanover, the Dukedom of Nassau, the Electorate of Hesse-Cassel, and the Free Town of Frankfort-on-the-Main listed as one of the main examples of subjugation. Oppenheim (1906) 279 (§265). See also RF Roxburgh (ed.), *International Law: A Treatise*, vol. 2 (*War and Neutrality*) 3rd ed. (Longmans, Green & Co., 1921) 327 (§265).

61 Fuller (ed.) (1933) 343 (File No. 763.72119/2113).

62 Accordingly, '[t]he good faith of any discussion would manifestly depend upon the consent of the Central Powers immediately to withdraw their forces everywhere from invaded territory'.

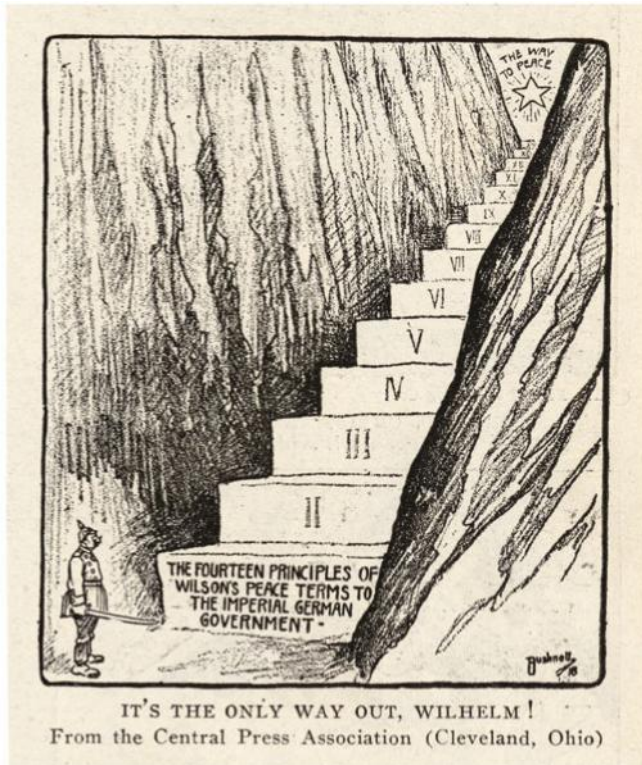


Figure 2. EA Bushnell, 'It's the Only Way Out, Wilhelm!' Billy Ireland Cartoon Library & Museum, The Ohio State University

Imperial Chancellor is speaking merely for the constituted authorities of the Empire who have so far conducted the war', in other words the fundamental question of representation and who was entitled to speak for or in the name of the German State.⁶³

For its part, the German Government responded to these queries in a Note of 12 October 1918,⁶⁴ which dealt with the first question by saying that 'its object in entering into discussions would be only to agree upon practical details of the applications of [said] terms'.⁶⁵ As for the second matter, after consultation with the Government of Austro-Hungary, the German Government 'declare[d] itself ready to comply with the propositions of the

63 Also contended in respect of Austro-Hungary: Fuller (ed.) (1933) 379 (File No. 763.72119/2251).

64 Ibid 357-58 (File No. 763.72119/2313).

65 It is interesting that in making this clarification, the German Government then stated that it 'believe[d] that the Governments of the powers associated with the United States also accept the position taken by President Wilson in his addresses'. Ibid.

President in regard to evacuation'.⁶⁶ And, finally, as to the third matter presented by Wilson, it was affirmed that '[t]he Chancellor, supported in all of his actions by the will of [the great] majority' of the Reichstag would speak 'in the name of the German Government and of the German people'.⁶⁷ Taken together, this set of exchanges confirmed the triangulated nature of the epistolary exercise then at hand: it could not be assumed that the US was speaking for itself as well as for its allies, since Wilson had sought to put clear blue water between the stance of the US and that of 'the Governments with which the Government of the United States is associated against the Central Powers'.⁶⁸

In the meantime, other Governments were beginning to make their own views known. The French Government, for example, had expressed some anxiety as to how President Wilson was dealing with Germany's peace proposal,⁶⁹ and it felt that an 'uncompromising attitude' should be adopted ('the man in the street looks upon the German proposal as a suspicious manoeuvre, a device to enable the German Army to extricate itself from a difficult position and to placate opinion at home').⁷⁰ Italy cautioned for 'no favourable response',⁷¹ whilst Belgium wanted to be heard on 'the guarantees that it would deem indispensable to the safety of Belgium' in the event of any armistice.⁷² As it happened, the three Prime Ministers—of Great Britain, France and Italy—were meeting in Versailles at around that time, where they had summoned Marshal Foch to meet with them and report on the military situation with a view to the possible contents of an armistice.⁷³

Apparently, there had been a 'tone of disappointment' on the British side that Wilson 'had not left the terms of armistice to the military men',⁷⁴ and it was reported that Clemenceau 'was not entirely in accord with President

66 Although counter-proposed that a mixed commission be established 'for making the necessary arrangements concerning the evacuation' Ibid

67 Ibid.

68 Ibid 382 (File No. 763.72119/2377a).

69 Fuller (ed.) (1933) 344 (File No. 763.72119/2060).

70 Ibid 345 (File No. 763.72119/8962).

71 Ibid 346 (File No. 763.72119/2066).

72 Through Paul Hymans, its Foreign Minister. Ibid 344 (File No. 763.72119/2043).

73 Ibid 351 (File No. 763.72119/8964). Foch wrote of 'the sole condition of evacuation announced up to that time by the President of the United States' (also, the 'fixing [of] a minimum without which there could be no Armistice')—and of the 'additional set of conditions' that he developed at the meeting of Allied Governments in Paris on the afternoon of 9 October 1918. Foch (1931) 529.

74 Fuller (ed.) (1933) 351 (File No. 763.72119/8964).

Wilson's fourteen points'.⁷⁵ So there were sure signs of discord occurring within the highest echelons. It was still, however, the early stages of a rather protracted process, and after meeting with Foch, the three Prime Ministers began drafting a note to Wilson regarding the contents of his response to the German Government: '[t]he tenor of this reply will be (that the?) evacuation of occupied territories is not sufficient guarantee. Foch stated before the Prime Ministers that the terms of the armistice shift from day to day according to the military situation; in view of the great victory by the British and French troops north of Saint-Quentin yesterday the terms of the armistice tomorrow will be different from those of today'.⁷⁶ In its final form, this Note, of 9 October 1918, to the President specified:

Limiting themselves to the most urgent question, that of the armistice, [the Allied Governments] agree with the President of the United States that the preliminary condition of all discussion of this question is the evacuation of all invaded territory. But they think for the conclusion of an armistice itself this condition, while necessary, would not be sufficient. It would not prevent the army from profiting by a suspension of hostilities to install himself, after the expiration of an armistice not followed by peace, in a better military position than at the moment of the expiration of hostilities. He would be left the facility of retiring from a critical situation to save his war material, reconstitute his units, shorten his front and retire without loss of men to new positions which he would have the time to choose and fortify.

The conditions of an armistice cannot be fixed until after consultation with military experts and in accordance with the military situation at the moment of engaging in negotiations. These considerations have been forcibly exposed by the military experts of the Allied Powers and especially by Marshall Foch. They are of equal interest to the armies of the Governments associated in the battle against the Central Empires.⁷⁷

Aware of all of these positions, Wilson was finally prepared to make a 'frank and direct statement' to the German Government. He did so on 14 October

75 Ibid 352. Also, Prime Minister Lloyd George wanted to have a definition of the meaning of the expression 'freedom of the seas' as used by President Wilson.

76 Ibid (File No. 763.72119/8961) (as reported by Arthur Hugh Frazier (Diplomatic Liaison Officer with the Supreme War Council) to Secretary of State Lansing).

77 Ibid 353 (File No. 763.72119/8965). From US Ambassador William G Sharp, the French press had apparently greeted President Wilson's reply with 'hearty commendation'. Ibid 354 (File No. 763.72119/2123). Nelson Page, US Ambassador to Italy, said that the presidential reply had been considered an instance of 'perfect diplomacy'. Ibid 354 (File No. 763.72119/2216).

1918.⁷⁸ Prompted by '[t]he unqualified acceptance by the present German Government and by a large majority of the German Reichstag of the terms laid down by the President of the United States of America in his address to the Congress of the United States on 8th of January, 1918, and in his subsequent addresses', the President held to the view that 'the process of evacuation and the conditions of an armistice are matters which must be left to the judgment and advice of the military advisers of the Government of the United States and the Allied Governments'.⁷⁹ Still, the baseline position of his Government was that 'no arrangement can be accepted by the Government of the United States which does not provide absolutely satisfactory safeguards and guarantees of the maintenance of the present military supremacy of the armies of the United States and of the Allies in the field'. The President felt 'confident that he can safely assume that this will also be the judgment and decision of the Allied Governments'.⁸⁰

The German Government followed this correspondence with a Note of its own on 20 October,⁸¹ in which it accepted 'the proposals relating to the evacuation of occupied territories'.⁸² The headlong insistence on this point, however, had spurred some concern that evacuation was being contemplated as 'the sole condition' for armistice.⁸³ Foch felt, too, that a 'trap'⁸⁴ may well have been up with this latest Note, since Prince Maximilian of Baden had argued that 'the actual standard of power on both sides in the field has to form the basis for arrangements safeguarding and guaranteeing this stand-ard'.⁸⁵ The Note did contain 'the solemn and explicit assurance of the German Government', at least as understood by Secretary of State Lansing, who had been instructed to respond on 23 October, as follows:

78 Ibid 358-59 (File No. 763.72119/2313) (communicated on the President's behalf by Secretary of State Lansing to Swiss *chargé d'affaires* Oederlin).

79 Ibid.

80 Ibid. Also: 'The President feels that it is also his duty to add that neither the Government of the United States nor, he is quite sure, the Governments with which the Government of the United States is associated as a belligerent will consent to consider an armistice so long as the armed forces of Germany continue the illegal and inhumane practices which they still persist in'.

81 Ibid 380 (File No. 763.72119/2377a).

82 Ibid.

83 Foch (1931) 529 (nurtured by Germany, but also by the 'confusion' of the correspondence 'between Berlin and Washington'. Ibid 531-32).

84 Foch(1931)531.

85 Fuller (ed.) (1933) 380. For Foch, an 'endeavour to lead [Allied Generals] on to ground which it hoped might prove more favourable'. Foch (1931) 531. See also 535 ('[t]he conditions of the Armistice were, in fact, to be established by the Allied Governments').

The President has . . . transmitted his correspondence with the present German authorities to the Governments with which the Government of the United States is associated as a belligerent, [with the suggestion that, if those Governments are disposed to effect peace upon the terms and principles indicated, their military advisers and the military advisers of the United States be asked to submit to the Governments associated against Germany the necessary terms of such an armistice as will fully protect the interests of the peoples involved and ensure to the Associated Governments the unrestricted power to safeguard and enforce the details of the peace to which the German Government has agreed,] provided they deem such an armistice possible from the military point of view. Should such terms of armistice be suggested, their acceptance by Germany will afford the best concrete evidence of her unequivocal acceptance of the terms and principles of peace from which the whole action proceeds.⁸⁶

These words would appear to have cast the US in the role of the overall broker of the peace that was to come,⁸⁷ but they also provide further proofs that triangulation was being pursued in open view ('if those Governments are disposed to effect peace upon the terms and principles indicated').⁸⁸ And so, too,

~~Director of Britain and France, Irwin Blair, in the Office of the US Great Britain, reported Secretary of State Lansing~~

there was 'a noticeable feeling of relief' upon the official transmission of the President's correspondence with the German Government: 'While the country as a whole felt that the President's demands would be in accord with those of Great Britain, there was a good deal of anxiety lest the series of notes between Germany and the United States should involve the Allies in unforeseen complications and possibly if too prolonged weaken the morale of the army and the people at home'.⁸⁹ Still, satisfactory progress was being made on the terms of the armistice for Germany, with Prime Ministers Lloyd George and Clemenceau realizing that these were 'somewhat harsher than is necessary' for making it 'impossible for Germany to renew hostilities'.⁹⁰ These terms were finally agreed on 4 November,⁹¹ when Wilson was invited by the Supreme War

86 Ibid 382 (File No. 763.72119/2377a).

87 Consider President Wilson's sense of the United States as arbiter: MacMillan (2002) 9.

88 Ibid.

89 Fuller (ed.) (1933) 413-14 (File No. 763.72/11952).

90 According to House in a Note of 1 November 1918: Fuller (ed.) (1933) 438 (File No. 763.72110/9045). See also *ibid* 444-45 (File No. 763.72119/9047).

91 *Ibid* 460 (File No. 763.72119/9054). And communicated by House to Secretary of State Lansing on 4 November: *ibid* 463 (File No. 763/72119/9056).

Council to notify the German Government that the next step was for them to send a *parlementaire* to Foch who would by then have received the instructions to act on behalf of the relevant Governments.⁹²

On the following day, Secretary of State Lansing asked for it to be reported to the German Government that Wilson was in receipt of a memorandum of observations by the Allied Governments on the correspondence with the German Government and that:

The Allied Governments have given careful consideration to the correspondence which has passed between the President of the United States and the German Government. Subject to the qualifications which follow they declare their willingness to make peace with the Government of Germany on the terms of peace laid down in the President's address to Congress of January 1918, and the principles of settlement enunciated in his subsequent addresses. They must point out, however, that clause 2, relating to what is usually described as the freedom of the seas, is open to various interpretations, some of which they could not accept. They must, therefore, reserve to themselves complete freedom on this subject when they enter the peace conference.

Further, in the conditions of peace laid down in his address to Congress of January 8, 1918, the President declared that invaded territories must be restored as well as evacuated and freed, the Allied Governments feel that no doubt ought to be allowed to exist as to what this provision implies. By it they understand that compensation will be made by Germany for all damage done to the civilian population of the Allies and their property by the aggression of Germany by land, by sea and from the air.⁹³

Lansing was also instructed by the President to say that he was in agreement with the interpretation set forth in the last paragraph of this memorandum of observations,⁹⁴ and that Foch had been duly authorized by the Government of the United States and the Allied Governments to receive properly accredited representatives of the German Government.⁹⁵ With these

92 Ibid 461 (File No. 763.72119/9052) (via Colonel House).

93 Ibid 468-69 (File No. 763.72119/3813k).

94 Ibid.

95 Ibid.

preparations done and out of the way,⁹⁶ the plans for peace could proceed to their next stage.⁹⁷

III

We should now try to gain more of an edge on Wilson's Fourteen Points of January 1918 in order to understand why they had held such magnetic sway for Germany in the approach to both the Armistice of Compiegne and the eventual peace of Versailles in June 1919.⁹⁸ In presenting his programme for peace to the joint session of Congress at the time of the 'parleys' of Brest-Litovsk,⁹⁹ Wilson chose to refer to 'the processes of peace' stored somewhere in the anonymity of the future, and that, 'when they are begun, [they] shall be absolutely open and that they shall involve and permit henceforth no secret understandings of any kind'.¹⁰⁰ His vision was of a world order that had shed 'secret covenants entered into in the interest of particular governments' and where '[t]he day of conquest and aggrandizement is gone by'.¹⁰¹ For him, the very prospect of peace marked a grand moment of discontinuity from the discredited and damaging traditions of the past,¹⁰² with Wilson speaking of the 'happy fact' that would make 'it possible for every nation whose purposes are consistent with justice and the peace of the world to avow now or at any other time the objects it has in view'.¹⁰³

96 David Hunter Miller, Legal Adviser of the American Peace Commission, regarded the Note of 5 — November 1918 as evidence that the Fourteen Points had 'formally become one of the bases of the peace terms with Germany'. DH Miller, 'The Making of the League of Nations', in EM House & C Seymour (eds), *What Really Happened at Paris: The Story of the Peace Conference, 1918-1919* (Charles Scribner's Sons, 1921) 398, 399 (also referring to 'the pre-armistice agreement').

97 Conveyed with considerable sensitivity by Hochschild (2018).

98 See, generally, GM Gathorne-Hardy, *The Fourteen Points and the Treaty of Versailles* (Clarendon Press, 1939).

99 As President Wilson remarked in his address of January 1918. Fuller (ed.) (1933) 12.

100 For President Wilson spoke of 'the possible bases of a general peace' and of 'the purpose of ascertaining whether it may be possible to extend these parleys into a general conference with regard to terms of peace and settlement'. Ibid.

101 Ibid.

102 See, e.g., C Clark, *The Sleepwalkers: How Europe Went to War in 1914* (Allen Lane, 2012) 29, 93.

103 Reinforced by his statement that '[w]hat we demand in this war . . . is nothing peculiar to ourselves. It is that the world be made fit and safe to live in; and particularly that it be made safe for every peace-loving nation which, like our own, wishes to have its own life, determine its own institutions, be assured of justice and fair dealing by the other peoples of the world as against force and selfish aggression. All the peoples of the world are in effect partners in this interest, and for our own part we see very clearly that unless justice be done to others it will not be done to us'. Fuller (ed.) (1933) 14. Though the notion of the 'peace-loving' nation is not found in the Covenant of

And so it was that the first of Wilson's Points—that '[o]pen covenants of peace, openly arrived at, after which there shall be no private international understandings of any kind but diplomacy shall proceed frankly and in the public view'—came into being.¹⁰⁴ This really was to be the defining component of his new world order for, without it, the decadence of public international law (and its preciously honed obligations) would wretchedly continue. It was an order to be premised as much on the quotidian workings of international relations as it was on points of higher principle, with Wilson more or less signalling the chronological disposition for that change—in the fullness of time, he reasoned, open covenants of peace would be succeeded by the absence of 'private international understandings of any kind'. It is these covenants of peace—presumably those covenants attending to the ending of the Great War—that would deliver the decisive rupture with the past. However, there could also have been no illusion about the scale of change that was being articulated that day: it was not just that the product of deliberations would be 'open', but that their preceding negotiations ('openly arrived at') would be too.¹⁰⁵ And what would go for those much anticipated covenants of peace was presumably—logically, irrepressibly—a foretaste of the diplomacy that was to come.¹⁰⁶

Quite crucially, however, there were real and urgent practical questions on the exact purport of the first of the Fourteen Points. If diplomacy was to be understood as 'carefully employing words, coded terms, euphemisms and loaded silences to make specific representations and induce specific actions or inactions with regard to international relations',¹⁰⁷ a world synonymous with the endemic confidentiality of its processes, what exactly could have been meant by covenants 'openly arrived at'? Openly to whom? And, in Wilson's vision, did 'covenants of peace' not include aspects of the pre-peace as it were,

the League of Nations, it does make an appearance in Art. 4(1) of the Charter of the United Nations—a requirement once described as 'extremely tenuous' on account of its obscurity. H Kelsen, 'Membership in the United Nations' 46 *Columbia Law Review* (1946) 391, 393.

104 Though, in this, and at least as a matter of practice, President Wilson was some months behind Leon Trotsky, People's Commissar of Foreign Affairs, and his 'Publication of the Secret Treaties', *Izvestiya*, No. 221, 23 November 1917. See J Quigley, 'Leon Trotsky and the Prohibition Against Secret Treaties' 19 *Journal of the History of International Law* (2017) 246.

105 Apparently, this formulation was inserted by the hand of President Wilson himself on the evening before the address; the original draft had read: '[o]pen covenants of peace, after which there shall be no private international understandings of any kind'. See WR Keylor, 'Versailles and International Diplomacy', in Boemeke, Feldman & Glaser (eds) (1998) 469, 474.

106 See, further, B Koremenos, 'Open Covenants, Clandestinely Arrived At' (paper on file with author).

107 CM Constantinou, 'Diplomacy', in R Bleiker (ed.), *Visual Global Politics* (Routledge, 2018) 104.

such as the Armistice of Compiègne?¹⁰⁸ What was to be said, then, of the manner of the presentation of the terms of Armistice to the German delegation on 8 November?¹⁰⁹ In an important set of interpretations of the Fourteen Points contained in a Memorandum to Lansing of 29 October 1918, Colonel Edward M House, Wilson's special adviser to the Paris Peace Conference, observed that the 'intention' behind the first Point was 'that nothing which occurs in the course of such confidential negotiations shall be binding unless it appears in the final covenant made public to the world'.¹¹⁰ This iteration seemed to gut the first Point of part of its reformist vitality, but it is an idea that nevertheless went on to inspire the content of Article 18 of the Covenant of the League of Nations ('[e]very treaty or international engagement entered into hereafter by any Member of the League shall be forthwith registered with the Secretariat and shall as soon as possible be published by it. No such treaty or international engagement shall be binding until so registered').¹¹¹

Colonel House's interpretation of, or 'commentary',¹¹² upon, Wilson's Fourteen Points in late October 1918 has been described by Nicolson as 'of very vital importance'.¹¹³ Nicolson was, however, also of the view that 'a most undesirable obscurity hangs over' that intervention,¹¹⁴ and this coming from someone with a record of 'veneration' for the Fourteen Points,¹¹⁵ as well as admiration for Colonel House ('the best diplomatic brain that America has yet produced'¹¹⁶). Ultimately, it was the idiom of contractuality that came to inform Nicolson's concern:

Was it on the basis of that interpretation that the Allies accepted the Fourteen Points . . . as the basis of the eventual Treaty of Peace? If so,

¹⁰⁸ This point raised only because of the reference to 'alike in peace and in war' in the second Point on the freedom of the seas.

¹⁰⁹ MacMillan reports that the Dominions were excluded from the settlement of the terms of armistice. MacMillan (2002) 45.

¹¹⁰ Fuller (ed.) (1933) 405-13 (File No. 763.72119/8979). These interpretations were prepared by Frank I Cobb (editor of the *New York World*) and Walter Lippmann (Secretary of the Inquiry to prepare materials for peace negotiations established by President Wilson in September 1917) as the result of the 'quick exegesis' solicited by House of the application of the Fourteen Points to the armistice negotiations. JM Cooper Jr., *Woodrow Wilson: A Biography* (Random House, 2009) 450.

¹¹¹ For further consideration, see M Donaldson, 'The Survival of the Secret Treaty: Publicity, Secrecy, and Legality in the International Order' 111 *American Journal of International Law* (2017) 575.

¹¹² Nicolson (1933) 13.

¹¹³ *Ibid.*

¹¹⁴ *Ibid* 15.

¹¹⁵ *Ibid* 12.

¹¹⁶ *Ibid* 15.

then the enemy Powers should assuredly have been informed at the time. I write subject to correction, since the exact documents, the exact change of suggestion and agreement, are not to-day available. Yet it is difficult to resist the impression that the Enemy Powers accepted the Fourteen Points as they stood; whereas the Allied Powers accepted them only as interpreted by Colonel House at the meetings which culminated in his cable of October 29. Somewhere, amid the hurried and anxious imprecisions of those October days, lurks the explanation of the fundamental misunderstanding which has since arisen.

In any case we, the technical staff, the civil servants, had no knowledge of Colonel House's 'Interpretation'. We also looked upon the Fourteen Points and their attendant pronouncements as the charter for our future activity... . [A] great gap widened between our terms of reference, and the eventual conclusions. Had we known of Colonel House's glossary, we might ... have seized upon it as a justification for our backsliding. Yet it was not until many years later that I even heard of this glossary. And I cannot, for one moment, pretend that it influenced my attitude to the slightest degree. I betrayed my own allegiance to the Fourteen Points.¹¹⁷

Even accounting for demands for 'the practical detail of application' of the Fourteen Points,¹¹⁸ we have seen how Colonel House's interpretation delivered a rather dramatic curtailment in meaning on the first of all the Points. Another example is afforded by his interpretation of the second of those Points ('[a]bsolute freedom of navigation upon the seas, outside territorial waters, alike in peace and war, except as the seas may be closed in whole or in part by international action for the enforcement of international covenants') which, apparently, did not disturb 'the weapon of blockade' and was designed 'to inculcate some respect for private rights and property'—register-ing, as Nicolson observed, a 'double gloss'.¹¹⁹ In effect, the account that he provides serves to underscore how the 'terms of reference' proved to be a moving feast, known to one side more or less (Allied Powers) but not necessarily

117 Ibid 15-16. Indeed, with contractuality very much in mind, note the reference to 'the charter for our future activity'. Ibid 16.

118 As intimated by the German Government in its Note of 12 October 1918. Fuller (ed.) (1933) 35758 (File No. 763.72119/2313).

119 Nicolson (1933) 14. Hence the description of House's 'glossary' at one point. Ibid 16. No doubt this interpretation was intended to meet Great Britain's stalling effort on the second Point—what has been referred to elsewhere as an instance of 'British "navalism"'. MF Boemeke, 'Woodrow Wilson's Image of Germany, the War-Guilt Question, and the Treaty of Versailles', in Boemeke, Feldman & Glaser (eds) (1998) 603, 609.

to the other (enemy Powers). So much for the inklings of a new world order! So much for the jettisoning of private international understandings of any kind! Yet, Nicolson is also clear in these passages how the speed of developments in ‘those October days’ may well have been responsible for ‘hurried and anxious imprecisions’ and for the ‘fundamental misunderstanding’ of which he was to write. This, of course, presents one charitable reading of things;¹²⁰ another is to see in these events the unyielding ways of the *ancien régime*, the irrepressible working methods of an ‘externalised aristocracy’ and its world order.¹²¹

It is best if we now give some further thought to the remaining Fourteen Points themselves. Wilson’s Fourteen Points might, of course, have a passing familiarity for each of us from the historical instruction of our schooldays, but it is another exercise entirely to return to and regard them as fully-fledged specimens of international legal activity, caught up—as has been claimed—in the solemnity of the various diplomatic exchanges that occurred in October and November 1918.¹²² Referred to as ‘a blueprint for postwar peace’,¹²³ but also as ‘commandments’,¹²⁴ the Fourteen Points displayed differing levels of specificity and, were we to be in a different age, we would surely be asking as to each Point’s ‘norm-creating character’.¹²⁵ So, for example, the ‘[a]bsolute freedom of navigation upon the seas’ of the second Point accepted the basic disciplinary dichotomy of international law (‘alike in peace and war’),¹²⁶ while carving out an exception for ‘international action’ as part of the apparatus for ‘the enforcement of international covenants’. Colonel House inferred from this the possibility of the existence of an ‘outlaw nation’ where ‘complete non-intercourse with that nation is intended’, such that neutrality—long a

120 For which there is some corroboration from Winston Churchill (who served as Minister of Munitions in the relevant period). WS Churchill, *The World Crisis*, vol. 4 (*Aftermath 1918-1928*) (Scribner, 1957) 100-01.

121 As it has been put with characteristic acuity by P Allott, ‘The Emerging International Aristocracy’ 35 *New York University Journal of International Law and Politics* (2003) 309, 334 (‘[t]he unwritten constitution of international unsociety has been a system of diplomacy and war, that is, the continuation of diplomacy by other means, conducted by an externalised aristocracy’).

122 At least according to Keynes (1919) 91.

123 M Astor, ‘1918 Brought An Armistice, but Also A World of Death’, *New York Times*, 30 January 2018.

124 Nicolson (1933) 15.

125 In (future) homage to the judgment of the ICJ in *North Sea Continental Shelf Cases* (*Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands*), ICJ Reports (1969) 3, 42 (§72).

126 See especially ES Corwin, ‘The Freedom of the Seas’ 209 *The North American Review* (1919) 29.

hallmark of international legal relations in warfare—would be kept at bay.¹²⁷ Contrast the determinacy of this provision with the quaint negotiability—the yearning, almost—of the third Point (‘[t]he removal, so far as possible, of all economic barriers and the establishment of an equality of trade conditions among all the nations consenting to the peace and associating themselves for its maintenance’)¹²⁸ and of the fourth (‘[a]dequate guarantees given and taken that national armaments will be reduced to the lowest points consistent with domestic safety’).¹²⁹

The fifth Point is interesting because it specifically—and uniquely among the Points—invokes the language of principle in enunciating the proposition of ‘[a] free, open-minded and absolutely impartial adjustment of all colonial claims’, which would be ‘based upon a strict observance of the principle that in determining such questions of sovereignty, the interests of the populations concerned must have equal weight with the equitable claims of the government whose title is to be determined’. Notwithstanding the seeming totality of the fifth Point (‘all colonial claims’), Colonel House resolved that this Point ‘obviously’ did not intend to reopen all colonial questions: ‘[i]t applies clearly [to those] claims which have been created by the war. That means the German colonies and any other colonies which may come under international consideration as a result of the war’.¹³⁰ How ironic—how supremely ironic—it was, then, that it had come to this, for it was at that self-same venue of the Palace of Versailles that Otto von Bismarck had issued, on 18 January 1871, *The Proclamation of the German Empire* (Die Proklamierung des deutschen Kaiserreiches), so memorably depicted by Anton von Werner, who had been present at the occasion (Figure 3).

In his interpretation, Colonel House went on to describe Great Britain and Japan as ‘the two chief heirs of the German colonial empire’,¹³¹ and, in

127 Fuller (ed.) (1933) 406. See, further, the discussion of GJ Simpson, *Great Powers and Outlaw States: Unequal Sovereigns in the International Legal Order* (Cambridge UP, 2004) 156.

128 Which, in reality, could not have been attained in Paris: this Point ‘was emphatically one of those proposals which would require general and protracted negotiations to carry into effect’. See Gathorne-Hardy (1939) 20. In the interpretation provided by House, this item was tied to the acceptance of ‘the responsibilities of membership in the League [of Nations]’. Fuller (ed.) (1933) 406.

129 Here, the interpretation of House, referred to the necessity of adopting a ‘general’ principle—and then to some kind of international commission of investigation ‘to prepare detailed projects for its execution’. Fuller (ed.) (1933) 406.

130 Ibid 407.

131 Ibid. At the conclusion of the Great War, German colonies included: Tanganyika, Ruanda-Urundi, the Kionga Triangle, German South West Africa, Kamerun, Togoland, German New Guinea and German Samoa.



Figure 3. A von Werner, *The Proclamation of the German Empire*, Palace Version (1877), bpk-Bildagentur

the same breath, proceeded to outline their ‘equitable’ claims¹³² as against those of Germany; or, at least, those equitable claims that Germany was assumed to have,¹³³ as it had not been given a recognised platform to make those claims known. So much for the ‘free, open-minded and absolutely impartial adjustment of all colonial claims’ that had been promised: Germany’s ‘overseas possessions’ would now set sail on a different course,¹³⁴ ‘such peoples form[ing] a sacred trust of civilization’ as proclaimed by Article 22 of the Covenant of the League of Nations.¹³⁵ More problematic still was the projection of the ‘interests’ (as opposed to the ‘equitable claims’) of ‘the populations concerned’ whose ‘exploitation should be conducted on the principle of the “open door”’.¹³⁶ Where, though, were the Tanganyikans, the Cameroonians, the Togolandese at Paris? How were *their* interests ever to be made known? Were they not entitled to speak of and for themselves? And why was what was

132 As to why ‘the colonies cannot be returned to Germany’: ‘[b]ecause [Germany] will use them as submarine bases, because she will arm the blacks, because she uses the colonies as bases of intrigue, because she oppresses the natives’. Ibid.

133 ‘That she needs access to tropical raw material, that she needs a field for the expansion of her population, that under the principles of the peace proposed, conquest gives her enemies no title to her colonies’. Ibid.

134 Article 119 of the Treaty of Versailles.

135 See AJ Crozier, ‘The Establishment of the Mandates System 1919-25: Some Problems Created by the Paris Peace Conference’ 14 *Journal of Contemporary History* (1979) 483.

136 Fuller (ed.) (1933) 407.

made available for the Poles, ‘for the Finns, the Lithuanians, the Letts, and perhaps . . . the Ukrainians’,¹³⁷ not also made available for them?¹³⁸

There then followed a cavalcade of Points which, while not overtly cast in terms of principle, were designed around specific countries, peoples or territories: so, there is the sixth Point on Russia (‘[t]he evacuation of all Russian territory and such a settlement of all questions affecting Russia as will secure the best and freest cooperation of the other nations of the world’); the seventh Point on Belgium (which ‘must be evacuated and restored without any attempt to limit the sovereignty she enjoys in common with all other free nations’); the eighth Point on France (‘[a]ll French territory should be freed and the invaded portions should be restored’); the ninth Point on Italy (‘[a] readjustment of the frontiers of Italy should be effected along clearly recognizable lines of nationality’); the tenth Point on Austria-Hungary (whose peoples ‘should be accorded the freest opportunity of autonomous development’) and the eleventh Point on Romania, Serbia and Montenegro (which ‘should be evacuated’). The twelfth Point concerned Turkish portions of the Ottoman Empire (‘which shall be assured a secure sovereignty’) as well as other nationalities which were then under Turkish rule (which ‘should be assured an undoubted security of life and an absolutely unmolested opportunity of autonomous development’) and the penultimate (thirteenth) Point, dealing with ‘[a]n independent Polish state’ (‘which should include the territories inhabited by indisputably Polish populations [and] which should be assured a free and secure access to the sea’).¹³⁹

For the most part, it could be said that international law was coming into something of its own with those Points that addressed questions of evacuation and restoration for the Regulations annexed to the 1907 Hague Convention (IV) Respecting the Laws and Customs of War on Land left no doubt that it was the authority—and not the sovereignty—of ‘the legitimate power’ that had ‘in fact passed into the hands of the occupant’.¹⁴⁰ Emphatically, then, even for that time, there was ‘not an atom of sovereignty in the authority of the occupant’,¹⁴¹ so that many of the remaining Points uttered by Wilson in

137 Again, from House in respect of the sixth Point. *Ibid.* 408.

138 Ditto the inhabitants of Alsace-Lorraine: MacMillan (2002) 161. Tellingly, although the fifth Point posits the determination of ‘all such questions of sovereignty’ as its objective, House deduced that ‘the principle involved in this proposition is that a colonial power acts not as owner of its colonies, but as trustee for the natives and for the society of nations’. Fuller (ed.) (1933) 407.

139 Ditto Serbia in the eleventh Point (‘accorded free and secure access to the sea’).

140 Article 43 of the 1907 Hague Regulations.

141 L. Oppenheim, ‘The Legal Relations between An Occupying Power and the Inhabitants’ 33 *Law Quarterly Review* (1917) 363, 364.

January 1918—the sixth (on Russia), the seventh (on Belgium), the eighth (on France) and the eleventh (on Romania, Serbia and Montenegro)—raised points of principle and were really doing the bidding of international law without being expressed thus. It is, of course, true that in articulating his seventh Point on the evacuation and restoration of Belgium (‘without any attempt to limit the sovereignty which she enjoys in common with all other free nations’), Wilson did go on to say that ‘[n]o other single act will serve as this will serve to restore confidence among the nations in the laws which they have themselves set and determined for the government of their relations with one another’.¹⁴² He spoke, too, of ‘this healing act’ for Belgium, without which ‘the whole structure and validity of international law is forever impaired’. This, however, was the only moment in the entire address of Wilson that international law was mentioned *eo nomine*—its millisecond in the limelight as it were—but, as we have just seen, its imprints in the Fourteen Points were really much broader than that. If the integrity of international law was there to be defended with the Great War, then its fortunes stood to be revived by reminders of the contents of other scraps of paper come the Great Peace.

All of this said, it is telling that the eighth Point on France was not confined to ‘the invaded portions restored’. It went on to announce—deliberately, intently, forthrightly—that ‘the wrong done to France by Prussia in 1871 in the matter of Alsace-Lorraine, which has unsettled the peace of the world for nearly fifty years, should be righted in order that peace may once more be made secure in the interest of all’. Doubtlessly reflecting the strength of political and public opinion that had consumed France over the intervening deca-des,¹⁴³ the point of principle it involved remains unclear: by his own words, Wilson had signalled a certain prospectiveness for his programme of peace, with ‘should’ serving as the verb of choice for many of his Fourteen Points.¹⁴⁴ All told, they were therefore a harbinger of things to come, an etching of the presidential vision for the future. Moreover, ‘[t]he day of conquest and aggrandizement is gone by’, Wilson had informed Congress, with open covenants of peace, openly arrived at issuing (‘after which’) a new kind of diplomacy. So the timing, as well as the substance, of this vision was poignantly at work in the essential message that had been communicated in January 1918 and yet, here, woven into the minutiae of the eighth Point, there was a

142 In his interpretation of the eighth Point (France), House reasoned that ‘great insistence should be put upon keeping the Belgian case distinct and symbolic’—presumably in consequence of the Treaty of London of April 1839. See Fuller (ed.) (1933) 409.

143 House observed ‘the strong current of French opinion’ that claimed “‘the boundaries of 1914 [1814]’ rather than of 1871’. Ibid 410.

144 True to form, Belgium (seventh Point) was the exception—it ‘must be’ evacuated and restored.

reaching back to the past in order to ensure that the ‘wrong’ of 1871 committed against France was now ‘righted’.¹⁴⁵ What was the exact nature of that wrong ‘in the matter of Alsace-Lorraine’ all those years ago, however?¹⁴⁶ And what, if anything, was to be made of international law’s implication in the processes that had ‘unsettled the peace of the world for nearly fifty years’? Or was this an attempt at reinventing the law’s own sense of right and wrong?

One final matter remains for consideration in this section, and it is the totality of the constitutional metric of the *lex pacificatoria* proposed for assessing the Peace of Versailles since it transpires that this went beyond Wilson’s Fourteen Points. This much is clear from the first Note of Prince Maximilian of Baden to Wilson in October 1918, which contained the German Government’s acceptance as the basis of peace negotiations in relation to the programme laid down in that address to Congress by Wilson and, equally importantly, ‘in his subsequent pronouncements, particularly his address of September 27, 1918’.¹⁴⁷ This was suitably imprecise, almost certainly not to have been the optimum foundation for proceeding with any degree of confidence. Yet its cogency seemed to hold sway as we find Keynes describing ‘the material of the contract’ with Germany as including additional addresses made by the President that were ‘four in number’: his message to a joint session of Congress the following month on 11 February 1918 (known as the ‘Four Principles’ or ‘Four Points’¹⁴⁸ address); the speech delivered in Baltimore on 6 April 1918 and then at Mount Vernon on 4 July 1918 (the ‘Four Ends’ speech) and, finally, the speech delivered at the Metropolitan Opera House in New York City on 27 September 1918 (the ‘Five Particulars’ speech).¹⁴⁹ Nicolson, too, wrote of the Fourteen Points ‘and their attendant pronouncements’,¹⁵⁰ by which he meant ‘the Four Principles’ of February 1918 and ‘the Five Particulars’ of September 1918,¹⁵¹ otherwise referred to as

145 See the discussion by SA Schuker, ‘The Rhineland Question: West European Security at the Paris Peace Conference of 1919’, in Boemeke, Feldman & Glaser (eds) (1998) 275, 277.

146 Bearing in mind House’s observation for the eighth Point that ‘[a]s the world stood in 1914, war between France and Germany was not itself a violation of international law’. Fuller (ed.) (1933) 409. See also E Benvenisti, *The International Law of Occupation*, 2nd ed. (Oxford UP, 2012) 123.

147 Fuller (ed.) (1933) 338.

148 Cooper Jr. (2009) 428.

149 Keynes (1919) 38.

150 Nicolson (1933) 16.

151 *Ibid* 15.

‘President Wilson’s twenty-three “Terms of Peace”¹⁵² or ‘the charter for our future activity’.¹⁵³

To be sure, these additional addresses more or less covered much of the same ground as the Fourteen Points had done—as there were many occasions of repetition but there were also some innovations, if not in substance then surely in style.¹⁵⁴ There is, thus, a sifting process necessary in order to separate ‘spirit, purpose, and intention’ from so-called ‘concrete solutions’—that is, from where ‘the contract is unequivocal’.¹⁵⁵ Going forward, in the first of these addresses, the ‘Four Principles’ message to the US Congress in February 1918, Wilson reported on the initial response to his Fourteen Points by Count Georg von Hertling, the Imperial Chancellor, on behalf of the German Government—and the President’s verdict was not flattering to say the least (‘very vague and very confusing’).¹⁵⁶ ‘The method the German Chancellor proposes’, Wilson advised his audience, ‘is the method of the Congress of Vienna. We cannot and will not return to that. What is at stake now is the peace of the world. What we are striving for is a new international order based upon broad and universal principles of right and justice,—no mere peace of shreds and patches. Is it possible that Count von Hertling does not see that, does not grasp it, is in fact living in his thought in a world dead and gone?’¹⁵⁷

Instances of these broad and universal principles of right and justice were then provided by Wilson. In an obvious echo of his introductory to the Fourteen Points given the previous month, he informed Congress that ‘[t]here shall be no annexations’—but, also, he went on to add, ‘no contributions, no punitive damages’.¹⁵⁸ And in a resynthesizing of some of the content of the Fourteen Points themselves,¹⁵⁹ Wilson fastened on the actual rubric of self-

152 Ibid 13.

153 Ibid 16.

154 Hence Gathorne-Hardy’s reflection that they were not ‘fresh’ points on account of their repetition. Gathorne-Hardy (1939) 36.

155 So recognized by Keynes (1919) 38.

156 Fuller (ed.) (1933) 108.

157 Ibid 109-10.

158 Ibid 110. Note, on this score, Nicolson (1933) 187 (‘We arrived [at Paris] as fervent apprentices in the school of President Wilson: we left as renegades... We arrived determined that a Peace of justice and wisdom should be negotiated: we left it, conscious that the Treaties imposed upon our enemies were neither just nor wise’).

159 The sixth Point on Russia, for instance (‘an unhampered and unembarrassed opportunity for the independent determination of her own political development and national policy’); or on the ‘autonomous development’ of the peoples of Austria-Hungary (tenth Point) as well as ‘the other nationalities which are now under Turkish rule’ (twelfth Point); or on the fate of ‘indisputably Polish populations’ (thirteenth Point)—but evidently not of the ‘populations concerned’ in the

determination as an ‘imperative’—an indispensable, that is—‘principle of action’:

Peoples are not to be handed about from one sovereignty to another by international conference or an understanding between rivals and antagonists. National aspirations must be respected; peoples may now be dominated and governed only by their consent. ‘Self-determination’ is not a mere phrase. It is an imperative principle of action, which statesmen will henceforth ignore at their peril. We cannot have general peace for asking, or by the mere arrangements of a peace conference. It cannot be pieced together out of individual understandings between powerful states. All the parties to this war must join the settlement of every issue anywhere involved in it; because what we are seeking is a peace that we can all unite to guarantee and maintain and every item of it must be submitted to common judgment whether it be right and fair, an act of justice, rather than a bargain between sovereigns.¹⁶⁰

How one could have thought that a singular heave of this order could upend centuries of practice of bargaining between sovereigns is difficult for modern sensibilities to fathom.¹⁶¹ There was, though, a tentativeness to some of the words that Wilson expressed that day, for he admitted that the US ‘is quite ready to be shown that the settlements she has suggested are not the best or the most enduring[;] [t]hey are only her own provisional sketch of principles and of the way in which they should be applied’.¹⁶² This does tend to emphasize the prospective and even experimental feel to the Fourteen Points a month after their initial airing, but, here, in February 1918, was Wilson announcing the ‘foundations’ for a general peace with ‘[t]he principles to be applied’ summarized as follows:

First, that each part of the final settlement must be based upon the essential justice of that particular case and upon such adjustments as are most likely to bring a peace that will be permanent;

German colonies (fifth Point). See, further, A Lynch, ‘Woodrow Wilson and the Principle of “National Self-Determination”: A Reconsideration’ 28 *Review of International Studies* (2002) 419.

160 Fuller (ed.) (1933) 110. See, further, A Getachew, *Worldmaking After Empire: The Rise and Fall of Self-Determination* (Princeton UP, 2019) 39.

161 President Wilson did admit to the (Senate) Committee of Foreign Relations on 19 August 1919 that ‘[w]hen I gave utterance to those words [that “all nations had a right to self-determination”] I said them without the knowledge that nationalities existed which are coming to us day after day You do not know and cannot appreciate the anxieties that I have experienced as a result of many millions of people having their hopes raised by what I have said’. See HWV Temperley (ed.), *A History of the Peace Conference of Paris*, vol. 4 (Henry Frowde and Hodder & Stoughton, 1921) 429.

162 Fuller (ed.) (1933) 111.

Second, that peoples and provinces are not to be bartered about from sovereignty to sovereignty as if they were mere chattels and pawns in a game, even the great game, now forever discredited, of the balance of power; but that

Third, every territorial settlement involved in this war must be made in the interest and for the benefit of the populations concerned, and not as part of any mere adjustment or compromise of claims amongst rival states; and

Fourth, that all well defined national aspirations shall be accorded the utmost satisfaction that can be accorded them without introducing new or perpetuating old elements of discord and antagonism that would be likely in time to break the peace of Europe and consequently of the world.¹⁶³

And, once again, the clarion call was sounded for ‘a new international order’—where ‘reason and justice and the common interests of mankind shall prevail’.¹⁶⁴

In his speech in Baltimore in April, Wilson spoke of ‘the presence of affairs so grave’ that had led him to avoid the use of ‘the weak language of hatred or vindictive purpose’.¹⁶⁵ He spoke, too, of ‘the final reckoning’ that was somewhere in the offing, and that the US was ‘ready’ to ‘be just to the German people’ in the cause of ‘a righteous judgment’.¹⁶⁶ He reserved his main energy, however, for addressing Germany’s military leaders—‘her real rulers’, as he called them. For they were the ones persevering with ‘an empire of force upon which they fancy that they can erect an empire of gain and commercial su-premacy’,¹⁶⁷ an empire, he claimed, in which ‘our ideals, the ideals of justice and humanity and liberty, the principle of the free self-determination of nations upon which all the modern world insists, can play no part’.¹⁶⁸ And he ended with the rousing conclusion that there was still everything to fight for: ‘Germany has one more said that force, and force alone, shall decide whether Justice and Peace shall reign in the affairs of men, whether Right as America conceives it or Dominion as she conceives it shall determine the destinies of

163 Ibid 112.

164 Ibid 113 (‘[w]ithout that new order the world will be without peace and human life will lack tolerable conditions of existence and development’).

165 Ibid 200.

166 Ibid 200-01.

167 Ibid 202.

168 Ibid.

mankind. There is, therefore, but one response possible from us: Force, Force to the utmost, Force without stint or limit, the righteous and triumphant Force which shall make Right the law of the world, and cast every selfish dominion down in the dust'.¹⁶⁹

More moderate in tone was Wilson's speech at Mount Vernon some three months later: it exuded the self-same confidence and resolve of his earlier delivery ('[t]he settlement must be final[;] [t]here can be no compromise[;] [n]o halfway decision would be tolerable'),¹⁷⁰ but, on the whole, it was more reflective and philosophical, especially on the nature of 'the great struggle in which we are engaged'.¹⁷¹ There was resonance with the general underpinnings of the Fourteen Points, as Wilson spoke in a more deliberate way about the four 'great objects' for which 'the associated peoples of the world are fighting' and these, he said, could be 'put into a single sentence': '[w]hat we seek is the reign of law, based upon the consent of the governed and sustained by the organized opinion of mankind'.¹⁷² Although also referred as 'principles' by Wilson,¹⁷³ it is a matter of some doubt as to whether they made any concrete additions to the Fourteen Points, quite apart from the extant dictates of what he called 'the common law of civilized society':

- (1) The destruction of every arbitrary power anywhere that can separately, secretly, and of its single choice disturb the peace of the world; or, if it cannot be presently destroyed, at the least its reduction to virtual impotence.
- (2) The settlement of every question, whether of territory, of sovereignty, of economic arrangement, or of political relationship, upon the basis of the free acceptance of that settlement by the people immediately concerned, and not upon the basis of the material interest or advantage of any other nation or people which may desire a different settlement for the sake of its own exterior influence or mastery.

169 Ibid 203. See also JW Schulte Nordholt, *Woodrow Wilson: A Life for World Peace* (University of California Press, 1990) 263.

170 Fuller (ed.) (1933) 270.

171 At Mount Vernon, President Wilson spoke of 'the peoples of the world—not only the peoples actually engaged, but many others also who suffer under mastery but cannot act; peoples of many races and in every part of the world,—the people of stricken Russia still, among the rest, though they are for the moment unorganized and helpless'. Ibid 269. At Baltimore, President Wilson had spoken of 'America and all who care or dare to stand with her must arm and prepare themselves to contest the mastery of the world, a mastery in which the rights of common men, the rights of women and of all who are weak, must for the time being be trodden under foot and disregarded'. Ibid 202.

172 Ibid 270.

173 Ibid 271.

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- (3) The consent of all nations to be governed in their conduct toward each other by the same principles of honour and of respect for the common law of civilized society that govern the individual citizens of all modern States in their relations with one another; to the end that all promises and covenants may be sacredly observed, no private plots or conspiracies hatched, no selfish injuries wrought with impunity, and a mutual trust established upon the handsome foundations of a mutual respect for right.
 - (4) The establishment of an organization of peace which shall make it certain that the combined power of free nations will check every invasion of right and serve to make peace and justice the more secure by affording a definite tribunal of opinion to which all must submit and by which every international readjustment that cannot be amicably agreed upon by the peoples directly concerned shall be sanctioned.¹⁷⁴

Finally, at the Metropolitan Opera House in New York City in late September 1918, Wilson admitted, in his 'Five Particulars' speech, that '[a]t every turn of the war we gain a fresh consciousness of what we mean to accomplish by it',¹⁷⁵ making clear that '[t]he common will of mankind has been substituted for the particular purposes of individual states'.¹⁷⁶ For him, the Great War had become 'a peoples' war, and peoples of all sorts and races, of every degree of power and variety of fortune, are involved in its sweeping processes of change and settlement'.¹⁷⁷ Shades of Baltimore and Mount Vernon again, then, but, with the reference to 'peoples of all sorts and races', query how much of the resulting Fourteen Points could be said to have instigated their own 'variety of fortune'. Still, Wilson spoke of 'a permanent peace'¹⁷⁸ or 'a secure and lasting peace'¹⁷⁹ that was in his sights, such that 'it will be necessary that all those who sit down at the peace table shall come ready and willing to pay the price, the only price, that will procure it; and ready and willing, also, to create in some virile fashion the only instrumentality by which it can be made certain that the agreements of the peace will be honoured and fulfilled'.¹⁸⁰

174 Ibid 270. See, further, 'War Cannot End With Compromise, Wilson Declares', *New York Times*, 5 July 1918.

175 Ibid 316.

176 Ibid.

177 Ibid 317.

178 Ibid.

179 Ibid 318.

180 Ibid.

That price, said the President, ‘is impartial justice in every item of the settlement, no matter whose interest is crossed’,¹⁸¹ and ‘[t]hat indispensable instrumentality’, as he then went on to put it,¹⁸² was the League of Nations that had been adverted to in abstraction as the last of his Fourteen Points in January 1918.¹⁸³ But ‘general terms’, said the President, ‘do not disclose the whole matter’ and ‘[s]ome details are needed’, or so he thought, ‘to make them sound less like a thesis and more like a practical programme’.¹⁸⁴ In this vein, he ventured ‘some of the particulars’ that would help fulfil his Government’s ‘own duty with regard to peace’,¹⁸⁵ and, with further echoes of what had gone before,¹⁸⁶ he articulated five details so:

First, the impartial justice meted out must involve no discrimination between those to whom we wish to be just and those to whom we do not wish to be just; Second, no special or separate interest of any single nation or group of nations can be made the basis of any part of the settlement which is not consistent with the common interest of all; Third, there can be no leagues or alliances or special covenants and understandings within the general and common family of the League of Nations[;] Fourth, and more specifically, there can be no special, selfish economic combinations within the League and no employment of any form of economic boycott or exclusion except as the power of economic penalty by exclusion from the markets of the world may be vested in the League of Nations itself as a means of discipline and control[;] Fifth, all international agreements and treaties of every kind must be made known in their entirety to the rest of the world.¹⁸⁷

181 Ibid.

182 Ibid.

183 An exhortation that ‘remained deliberately vague and general’. Cooper Jr. (2009) 371. Between paragraphs in the same speech, note how ‘a league of nations’ became ‘the League of Nations’. The fact that it was a ‘Covenant’ of the League of Nations ‘is believed to be the first use of the term . . . to describe a treaty and probably owes its existence to the Presbyterian origin of President Woodrow Wilson’. AD McNair, *The Law of Treaties* (Clarendon Press, 1961) 25. The regular use of that term in the Fourteen Points—first, second, thirteen and fourteenth Points—does seem to confirm that interpretation.

184 Fuller (ed.) (1933) 318-19.

185 Ibid 319.

186 P O’Toole, *The Moralists: Woodrow Wilson and the World He Made* (Simon & Schuster, 2018) 325. Cooper Jr. has regarded it as an enlargement of the points made at Mount Vernon—but, also, a re-iteration of ‘five of the Fourteen Points’. Cooper Jr. (2009) 442.

187 Fuller (ed.) (1933) 319. Some of these postulations were no doubt directed at the former colonial power of the United States: see GR Coyne, *Woodrow Wilson: British Perspectives, 1912-1921* (Palgrave Macmillan, 1992) 202.

IV

When the draft version of the Treaty of Versailles eventually emerged, it was presented to Count Ulrich von Brockdorff-Rantzau, the German Foreign Minister and chief spokesperson for the German delegation, at the Trianon Palace Hotel near the Palace of Versailles on 7 May 1919.¹⁸⁸ At that meeting, Clemenceau introduced the main headings of the document before the seated gathering, informing the German delegation that ‘[t]he hour has struck for the weighty settlement of our account’. He asked if anyone wished to take the floor; Brockdorff-Rantzau raised his hand, and, ‘[a]lthough he said much that was conciliatory, the ineptitude of his interpreters, his decision to remain seated and his harsh, rasping voice left an appalling impression’.¹⁸⁹ Teams of translators then worked through the night to secure a German version of the draft treaty that they had been given earlier that day, and, by the following morning, this was ready for dispatch to Berlin (‘[t]he Saar basin . . . Poland, Silesia, Oppeln ... 123 milliards to pay and for all that we are supposed to say “Thank you very much”’).¹⁹⁰ Germany had been given fifteen days to formulate its official response, though this was subsequently extended.¹⁹¹

For Brockdorff-Rantzau, that long night of digesting the contents of the document in its entirety prompted the conclusion that ‘this fat volume is quite unnecessary. They could have expressed the whole thing more simply in one clause—*L’Allemagne renonce a` son existence*’.¹⁹² And it is this sentiment—a sentiment of disdain at the sheer excess of the consequence that had been devised over those six months in Paris—that came to inform the eventual (and immensely detailed) response from Germany. This surfaced on 29 May 1919,¹⁹³ and, in it, Brockdorff-Rantzau did not hold back on his choice of language: he wrote of amputation (‘[w]e must agree that East Prussia shall be amputated from the body of the State’),¹⁹⁴ detachment and annexation (‘the Saar must be

188 Today, the Waldorf Astoria Versailles – Trianon Palace. See, further, S Bhattacharya, ‘The German Delegation at the Paris Peace Conference 1919’ 51 *Proceedings of the Indian History Congress* (1990) 724.

189 Drawn from MacMillan’s recounting of events. MacMillan (2002) 464. The speech is reproduced as ‘Address of Count Brockdorff-Rantzau of May 7, 1919’, in *German White Book Concerning the Responsibility of the Authors of the War* (Oxford UP, 1924) 3-5. MacMillan also reports that, after leaving the meeting, Brockdorff-Rantzau lit a cigarette—and that his lips were trembling.

190 Again, MacMillan (2002) 464.

191 WA Schabas, *The Trial of the Kaiser* (Oxford UP, 2018) 204.

192 GJ Meyer, *The World Remade: America in World War I* (Bantam Books, 2016) 521.

193 JV Fuller (ed.), *Papers Relating to the Foreign Relations of the United States, The Paris Peace Conference, 1919, Volume VI* (US Govt. Printing Office, 1946) 795.

194 Ibid.

detached from our Empire and the way must be paved for its subsequent annexation to France, although we owe her debts in coal only, not in men'),¹⁹⁵ and, indeed, of the very abolition of sovereignty itself ('[h]er chief waterways are subjected to international administration; she must construct in her territory such canals and railways as her enemies wish; she must agree to treaties, the contents of which are unknown to her, to be concluded by her enemies with the new States on the east, even when they concern her own frontiers').¹⁹⁶ There could be no mistaking what these terms would mean for Germany and its people in his view: it was to be 'cut into pieces and weakened' came the charge.¹⁹⁷ 'Thus must a whole people sign the decree for its own proscription, nay, its own death sentence'.¹⁹⁸ More of *renonce à son existence*—much, much more.

Germany's official response seemed to empanel two core logics; one was that '[t]he exactions of this Treaty are more than the German people can bear'—essentially, the idea that the authors of the draft treaty had created something that would prove impossible to make good.¹⁹⁹ There were strong traces, here, of the position adopted in the Declaration appended by Germany to the Armistice of Compiègne, and the plans for peaceful settlement had given cause to rekindle these concerns. The other logic centred on what Brockdorff-Rantzau called 'an assured peace of justice' as promised by President Wilson,²⁰⁰ as against 'the victorious violence of our enemies',²⁰¹ where he observed that 'Treaties of Peace signed by the Great Powers have, it is true, in the history of the last decades again and again proclaimed the right of the stronger'.²⁰² The draft treaty was meant to be a departure from those practices of the past, but Brockdorff-Rantzau contended that it had fallen far short of the 'expectation' of 'a peace proposal on the agreed principles'—and of 'the peace of justice which had been promised to us'.²⁰³ There was only the briefest imparting of what these principles were or could have been,²⁰⁴ but

195 Ibid 795-96.

196 Ibid 796-97.

197 Ibid 796.

198 Ibid 797.

199 Ibid 795 ('[t]he more deeply we penetrated into the spirit of this Treaty, the more convinced we became of the impossibility of carrying it out').

200 Ibid 799.

201 Ibid 795.

202 Ibid 799.

203 Ibid 795.

204 Although, towards the end of the communication, he did refer to the first of President Wilson's Fourteen Points. Ibid 799.

these were given a much more detailed rendition in the enclosure that accompanied that communication (entitled ‘Observations of the German Delegation on the Conditions of Peace’), which ran to a stupendous hundred pages or so.²⁰⁵

Structured as a series of objections to ‘Versailles’ (‘[t]he contradiction between the Draft Treaty on the one hand, and the agreed legal bases, the earlier assurances of enemy Statesmen, and the general idea of the League of Nations on the other hand’) as well as, courageously if foolhardily, setting forth an alternative vision for peace (‘[t]he German proposal’), the document was an effort to rescue ‘the essential contents of the future Treaty of Peace’ that had already been ‘determined in regard to its main features by its preceding history’.²⁰⁶ Embedded in this ‘preceding history’ was the constitution for the making of the peace—the future Treaty of Peace—which had also fore-grounded Germany’s expectations. The document is remarkable for the close heed it paid to the ‘historical facts’²⁰⁷ of the various exchanges that had occurred between Wilson, the German Government as well as the Allied Governments in October and November 1918, with the German Government holding to the position that ‘an unquestionably binding *pactum de contra-hendo* ha[d] been concluded between the German Government on the one part and the Governments of the Allied and Associated Powers on the other part’. In that pact, it was maintained, ‘the basis for the conclusion of the peace has for both parties been irrevocably laid down’.²⁰⁸ It is from this set of exchanges—that included Wilson’s Fourteen Points but, also, as was said over and over again, his ‘subsequent addresses’²⁰⁹—that certain ‘joint principles’ assumed their shape and form,²¹⁰ and these had, in turn, meant that Germany had ‘a right to discuss the conditions of peace’ with which it had been presented.²¹¹

For the German Government, these principles suggested that the Peace of the Great War ‘was to be a Peace of right and not of violence’,²¹² and various

205 See, further, MacMillan (2002) 466 (describing ‘pages of closely reasoned objections and counterproposals’).

206 Fuller (ed.) (1946) 800 (also: ‘a firm basis was given for the negotiations at Versailles’).

207 Ibid 802.

208 Ibid 802-03.

209 Ibid 802. Also: ‘[a]ll these principles were incorporated in the 14 Points of President Wilson and in his later Declarations’. Ibid 803.

210 Ibid 803.

211 Ibid.

212 Ibid 805. And, earlier, ‘this unparalleled war should be followed by a new kind of peace, a peace of right and not a peace of force’. Ibid 803.

assurances from various politicians at various intervals had been made along these lines, including the insistence that there had been no war against the German people. All such assurances had sadly come to naught Germany argued: '[t]he Draft Treaty shows that none of these solemn and repeated promises has been kept',²¹³ with respect to territorial questions, colonial possessions, the 'economic war' on private property,²¹⁴ and so on and on and on. Example after example was hauled forward from the draft treaty for a fusillade of criticism that was quite unsparing in its sweep: 'in all demands of the Treaty, we find the notorious principle of Might before Right'.²¹⁵ So much for the peace of right, the promised peace of justice.²¹⁶

The approach adopted therefore requires a parsing out of Wilson's Fourteen Points, together with a deeper understanding of what each of them provided individually—fundamentally a sense of their respective normativity or potential for normativity. For example, the specificity of the second Point (on the freedom of the seas) differed quite markedly as a substantive legal proposition from the fourteenth and final Point (on the League of Nations),²¹⁷ which stipulated that '[a] general association of nations must be formed under specific covenants for the purpose of affording mutual guarantees of political independence and territorial integrity to great and small states alike'. Consider, too, the sixth Point (on Russia), which ended with the flourish that '[t]he treatment accorded Russia by her sister nations in the months to come will be the acid test of their good will, of their comprehension of her needs as distinguished from their own interests, and of their intelligent and unselfish sympathy',²¹⁸ and was evidently not intended to institutionalize any kind of legal obligation.

In a pattern discernible from Germany's overall response, the relevant component of Wilson's Fourteen Points would then be singled out for citation alongside statements from his other addresses,²¹⁹ including all of those that

213 Ibid 808.

214 Ibid 809.

215 Ibid 808.

216 This 'peace of justice' was also described as an 'idea' and a 'principle'. Ibid 808, 809.

217 Subject as the second Point is (or was) to 'various interpretations'. Ibid 802. Consider, however, N Shimazu, *Japan, Race and Equality: The Racial Equality Proposal of 1919* (Routledge, 1998) 16.

218 See, further, B Miller Unterberger, 'Woodrow Wilson and the Bolsheviks: The "Acid Test" of Soviet-American Relations' 11 *Diplomatic History* (1987) 71.

219 And these were not always 'subsequent': in the context of the League of Nations, for example, reference was made to a statement from President Wilson on 22 January 1917. Fuller (ed.) (1946) 811. As for the penultimate of the Fourteen Points (Poland), reference was made to President Wilson's Address to the Senate of 22 January 1917. Ibid 836.

have been discussed here: to a joint session of the United States Congress in February 1918,²²⁰ at Baltimore in April 1918,²²¹ at Mount Vernon in July 1918,²²² and at the Metropolitan Opera House in New York City in September 1918.²²³ However, more often than not, Wilson's utterances were not subjected to sustained argument or scrutiny in order to account for any differentials in meaning, as one might expect of any well-reasoned legal opinion. As with the last Point on the League of Nations, what Wilson said was then juxtaposed in a crescendo of tidily assembled rhetorics alongside 'promises'²²⁴ that had been made from other statesmen of the day—Herbert Asquith, Lord Robert Cecil, Sir Edward Grey, the French Prime Minister Alexandre Ribot—promises that 'this League of Nations would unite the belligerents, conquered and conquerors alike, in a lasting community of law'.²²⁵ Again, how these various adornments would help to sink into place a viable or enduring legal obligation regarding an institution that was still to take its first breaths of life is quite difficult to say.²²⁶

Germany seemed to be on stronger ground as far as its colonial possessions were concerned, for the fifth of Wilson's Fourteen Points had provided for '[a] free, open-minded, and absolutely impartial adjustment of all colonial claims', and, in light of this, it took issue with the plan of Article 119 of the draft treaty to renounce 'all her rights and titles over her overseas possessions'. 'The basis of any impartial solution', it was stated, 'is that before a decision is

220 For example, on territorial questions (ibid 822); on relations with Austria (ibid 832).

221 'We are ready, whenever the final reckoning is made, to be just with the German people, deal fairly with the German Power, as with all others'. Ibid 805.

222 For example, on territorial questions (ibid 822) and on political-commercial provisions (ibid 866).

223 On the League of Nations, for example (ibid 811, 820) and on political-commercial provisions (ibid 866).

224 Ibid 810. Also referred to as 'significant declarations by the leading statesmen of the Allied and Associated Powers'. Ibid 819. This stylization of 'promises' contrasts with 'assurances' elsewhere in the document (as in 'the assurances given in regard to the legal basis of the Peace negotiations' (ibid 803)), but Germany did not move to test the ground of self-induced normativity (in contrast to 'general principles of law' which were mentioned ibid 852).

225 Ibid. Hence the disappointment: 'in spite of what was then said the Covenant of the League of Nations has been laid down without Germany's cooperation. Nay, more, Germany is not even on the list of States which have been invited to adhere to the League. Germany can indeed apply for admission, but her admission is made dependent upon "effective guarantees"'—a reference to the first article of the Covenant of the League of Nations—'whose extent and contents are not even known to her'. Ibid 812. 'It is impossible, therefore, to speak of a true League of Nations to which she is not admitted. That which the Treaty of Peace aims at creating is rather a continuation of the coalition of enemies which does not deserve the name of a "League of Nations"'. Ibid.

226 Indeed, with the Fourteenth Point, President Wilson had envisaged 'specific covenants' for 'the purpose of affording mutual guarantees of political independence and territorial integrity to great and small States alike'.

reached the parties be heard and their claims examined. Article 119 begins by a rejection of the German claims without permitting Germany any chance of supporting them'.²²⁷ Germany described this provision as an 'irreconcilable contradiction' with Wilson's fifth Point,²²⁸ and in a self-instituted but ultimately misplaced simulation of a fair hearing launched on behalf of its dissipating Empire, it proceeded to expand upon 'the claim to her colonies'—that these had been acquired justifiably, it said, 'and developed . . . by hard, successful and sacrificing toil'.²²⁹ Retention of the colonies was therefore deemed essential, 'as in view of the unfavourable rate of exchange Germany must have the possibility of obtaining the raw materials necessary for her economic life as far as possible from her own colonies'.²³⁰ These colonies were an important outlet, too, for exports for German industries as well as for 'settlements for ... her surplus population'.²³¹ Germany did not stop there, for it claimed that the retention of these possessions was 'equally based on the interests of the colored populations of these territories',²³² which most assuredly would have come as news to those very populations.

It is instructive that Germany did not confine its criticism of the plan for its colonies to Wilson's Fourteen Points: it spoke, too, of its 'natural claim' in this regard as well as its view that '[t]he essence of State activities in colonial territories consists not in capitalist[ic] exploitation of a less developed race, but in the winning of backward peoples for a higher civilization'. 'It follows', Germany maintained, 'that the more advanced Powers have a certain natural claim to share in colonial activities' and that 'German efforts in colonial areas are indisputably great. The German claim is not satisfied by a Treaty which robs Germany of all its colonies'.²³³ This is an interesting choice of words to be sure, though it is not altogether clear from what Germany said whether its natural claim was tantamount to one of its inherent rights as recognized by international law, or whether this was another way of pleading a 'moral claim' to its colonies.²³⁴ One is not sure, either, of what to make of the taxonomy it

227 Ibid 841.

228 Ibid.

229 Ibid.

230 Ibid.

231 Ibid.

232 Ibid 842.

233 Ibid 808.

234 Germany had, after all, referred to itself as 'one of the great civilised races' (*Kulturvolk*) and that, in consequence, 'Germany has a moral claim to be allowed to continue its successful work'. Ibid 842. Note, also, the reference to 'that "inborn right" of men and peoples, beneath whose guiding star the English State developed, the people of the Netherlands won freedom, the North American

developed involving the so-called ‘more advanced Powers’, since Germany had allowed itself to overindulge in the notion of equality in its counterproposal for the League of Nations (the Covenant of the League ‘would safeguard the complete equality of rights and reciprocity for all nations’).²³⁵

This tendency, to reach beyond the Fourteen Points and related pronouncements to other forms of authority and modalities of argumentation, is one of the most interesting elements to emerge from Germany’s response to the draft treaty: natural claims, inborn rights as well as general principles of law were joined by references to ‘an immemorial historical right’,²³⁶ to ‘the standards of international law’,²³⁷ to ‘the fundamental principle of international law’ (that ‘every people has a right to live’),²³⁸ to the ‘basic rights of peoples’,²³⁹ to ‘universal national principle’,²⁴⁰ and to ‘the dignity of an independent people’.²⁴¹ The suggestion is that, in the final analysis, there were never fourteen ways and only fourteen ways of looking back and testing the validity of ‘Versailles’, draft version or otherwise: Germany’s dossier of dissections made the international law of that time seem rich and even resplendent with argumentative possibility. The convocation of normativity in each instance is thus worth revisiting for what it tells us about the perceived forms of authority of international law and legal argument then in existence, the rough parameters for exercises of persuasion. So, we find that in discussing the scope of reparations envisaged for Germany (‘directed simply to the controlling of Germany as a kind of Bankrupt on a large scale’),²⁴² the point was made that ‘[t]here are natural rights of nations, as there are natural rights of man. The

Nations attained its independence, and France shook off absolutism... . A Treaty such as that which has been presented to Germany appears to be irreconcilable with respect for this inborn right’. Ibid 818.

235 Ibid 819.

236 Ibid 808.

237 Ibid 809 (in respect of ‘economic war’ outwith hostilities).

238 Ibid 814.

239 Ibid 817 (‘The right which every state has to self-existence means above everything that it should have complete disposal over [*determination of*] the internal organisation of its own life. A limitation of this right in the case of Germany is a violation of the basic right of peoples’).

240 Ibid 831 (‘according to which, when territory changes hands, a State acquiring territory from another State takes over a portion of the national debt of that State, and is to pay for the State possessions in the ceded territory’).

241 Ibid 872. As the basis of its rejection of Articles 283 and 284 on postal, telegraphic and radio-telegraphic conventions (‘[t]he acceptance of a blank undertaking of this character [regarding special stipulations for Germany] is incompatible with the dignity of an independent people’. Ibid 872). Also, ‘the dignity of German courts’. Ibid 893.

242 Ibid 810. Elsewhere in the document, it was said that the draft treaty ‘reduce[d] the German people to a state of financial slavery which has never yet been known in the history of the world’. Ibid 816.

inalienable basic right of all States is the right of self-maintenance and self-determination [and] [t]he condition which it is here proposed to impose upon Germany is incompatible with this fundamental right. Germany is to take upon itself obligations of reparation, the amount of which is not even fixed'.²⁴³

Importantly, in handling the matter of reparations, Germany had recourse to excerpts from speeches given by Wilson in October 1916 ('no single fact has been the cause of war')²⁴⁴ and January 1917 (on Peace which 'in all essential points rests on equality and on the basis of the common enjoyment of a good action for the benefit of all in common, in which the equality of nations consists in the equality of their rights').²⁴⁵ These citations accompanied 'the solemn announcements and stipulations of the year 1918',²⁴⁶ which had come to clarify in Germany's own mind the extent of its 'obligation to in-demnify'.²⁴⁷ And Germany was steadfast on the matter: 'the obligation for compensation . . . cannot apply to other districts than those of which the restoration was demanded in the message of President Wilson'.²⁴⁸ 'An obligation to restore these—but only these—districts was . . . acceptable to Germany'.²⁴⁹ Germany adhered to this position because it was 'the attack on Belgium alone for which the German Government took the responsibility at the time of the conclusion of the Armistice',²⁵⁰ but, when it came to the Treaty of Versailles ('[t]he Allied and Associated Governments . . . require, and Germany undertakes, that she will make compensation for all damage done to the civilian population of the Allied and Associated Powers and to their property during

²⁴³ *Ibid.*

²⁴⁴ *Ibid.* 809.

²⁴⁵ *Ibid.* 810.

²⁴⁶ *Ibid.* 851 (also referring to 'the covenanted agreement' and to 'the arrangements of the Autumn of 1918').

²⁴⁷ *Ibid.* 850.

²⁴⁸ *Ibid.* Restoration was mentioned by Wilson in respect of Belgium (seventh Point), France (eighth Point) and Romania, Serbia and Montenegro (eleventh Point). It was demanded for Belgium ('must be') and exhorted for the others ('should be'). Italy had been 'unaccountably omitted' in this respect. Keynes (1919) 73.

²⁴⁹ *Ibid.* An obligation as modified by Secretary of State Lansing in his Note of 5 November 1918—which Germany accepted. Fuller (ed.) (1933) 469 (to include compensation 'for all damage done to the civilian population of the Allies and their property by the aggression of Germany by land, by sea and from the air'). For Keynes, there was a 'limiting quality' to these words that was reinforced by Wilson's speech to Congress of February 1918 ('no contributions, no punitive damages'). Keynes (1919) 71.

²⁵⁰ *Ibid.* (conceding, though, that it should 'also be recognised in the same manner for Northern France, since the German Armies reached the districts of Northern France by a way that led across violated Belgium neutrality').

the period of the belligerency of each as an Allied or Associated Power against Germany by such aggression by land, by sea and from the air, and in general all damage as defined in Annex I hereto'),²⁵¹ more was envisaged besides.²⁵²

Perhaps the real difficulty in all of this was the endeavour to invest each of Wilson's Fourteen Points with a law-ness that in reality not all could command or sustain. For, as we have witnessed in the preceding pages, once uttered, each Point invariably became productive ground for interpretation, counter-interpretation and re-interpretation. Ordinarily, these are the dynamics associated with any treaty once it has entered into force, but they also happen to be the pathologies of getting us to normativity in the first place—and therein lies the rub, for there are difficulties in pinpointing the moment of synchronized acceptance of the *lex* for this *pacificatoria*. From the high plinth of hindsight, we now know, too, that some of Wilson's positions are more amenable to categorization as studies in the evolution of international normativity rather than in the finality of law thus articulated. Self-determination, for example, was not to be found in his Fourteen Points from January 1918 but, just over a month later, it had been heralded as 'an imperative principle of action'—as something the world could not do or live without.²⁵³ And, even then, no one was fully sure as to how it was supposed to function in practice from the standpoint of international law.²⁵⁴ Then again, perhaps there was a much more profound problem lurking on the scene, and that was to do with the evident paucity of political fortitude so as to see through even the most elementary components of Wilson's programme for a world anew. Germany had said of the draft treaty of peace that it 'is to be the greatest achievement of its kind in all history'—but, also, and somewhat incredulously, that there was 'no precedent for the conduct of such comprehensive negotiations by an

251 Article 232(2) of the Treaty of Versailles.

252 Especially in view of the reference to Annex I. Keynes (1919) 97 (emphasizing paragraphs 5, 6 and 7 of that Annex). See, however, the discussion of MacMillan (2002) 193.

253 A Roberts, 'Keynote', in S van Hoogstraten, N Schrijver, O Spijkers and A de Jong (eds), *The Art of Making Peace: Lessons Learned from Peace Treaties* (Brill Nijhoff, 2017) 12, 14.

254 For President Wilson, this principle applied to 'peoples' (undefined); Germany made reference to the 'self-determination of peoples' (Fuller (ed.) (1946) 814) but also to '[t]he right of self-determination of nations' (ibid 823) and to 'national right of self-determination' (ibid 808). This principle had particular bite for the 'inhabitants' of the Saar region (ibid 815)—though see reference to the 'territories' of Upper Silesia and the Saar district (ibid 822)—and to the 'peoples' of the districts of Eupen, Malmedy and Prussian Moresnet, and, again, the 'inhabitants' of Alsace-Lorraine (ibid 815; also 854). Part of the difficulty, as MacMillan has observed, is that "[s]elf-determination" was the watchword, but this was not a help in choosing among competing nationalisms'. MacMillan (2002) xxix.

exchange of written notes only'.²⁵⁵ *Plus ça change, plus c'est la même chose*. Perhaps, though, this was too great a war, with too much at stake for too many people for the prerogatives of victory to be hemmed in any appreciable way. It did not matter in the end, for it left Germany to wonder, as we must surely do all these many decades later, whether 'a moribund conception of the world, imperialistic and capitalistic in tendency, celebrates in that document its last dreadful triumph'.²⁵⁶

255 Fuller (ed.) (1946) 799 (also: '[o]nly the cooperation of all nations, a cooperation of hands and spirits can build up a durable peace': *ibid*).

256 *Ibid* 818.