

January 2002

Honour's Role in the International States' System

Allen Z. Hertz

Follow this and additional works at: <https://digitalcommons.du.edu/djilp>

Recommended Citation

Allen Z. Hertz, Honour's Role in the International States' System, 31 Denv. J. Int'l L. & Pol'y 113 (2002).

This Article is brought to you for free and open access by the University of Denver Sturm College of Law at Digital Commons @ DU. It has been accepted for inclusion in Denver Journal of International Law & Policy by an authorized editor of Digital Commons @ DU. For more information, please contact jennifer.cox@du.edu, digitalcommons@du.edu.

Honour's Role in the International States' System

Keywords

Jurisprudence, States, Violence, Copyright

HONOUR'S ROLE IN THE INTERNATIONAL STATES' SYSTEM*

ALLEN Z. HERTZ*

INTRODUCTION AND SUMMARY

Studying the First World War's origins, James Joll (1918-1994), Professor of International History at the University of London, offered this insight: "In the late 20th century we perhaps find it easier to conceive of foreign policy as being motivated by domestic preoccupations and by economic interests than by . . . considerations of prestige and glory. It does not necessarily follow that the men of 1914 thought in the same way as we do."¹ To recapture that age which ended during the First World War, this essay analyzes the meaning of "honour" as a staple of European political philosophy. The significance of the "word of honour" is then located in the context of European courtly society, where a king's honour is explored in relation to that of his country and in the "international of kings" that was the European States' system until 1917-18. Attention is then directed to discourse about "honour" and "interest" as rhetoric of British foreign policy. It is suggested that the idea of honour was at that time consciously exploited for political ends. Examples are used to show that countries actually fought for honour, which is portrayed as one of the causes of the First World War, and directly relevant to Great Britain's decision to confront Germany in 1914. Thereafter, focus shifts to "national honour" as recognized by public international law, breach of which then met the sanction of dishonour. Attention is paid to wartime interest in a new legal paradigm and its reception by the governments in London and Washington. This is followed by a description of the architecture of the 1919 peace settlement, which embodied a new law-based order, antithetic to both honour and aristocratic diplomacy. Finally, the shift from honour to law is tested by looking at the discourse used at the League of Nations when Hitler unilaterally denounced key treaty provisions.

A. What is Honour?

An answer comes from French magistrate, parliamentarian, historian and

* B.A. (McGill University); M.A., Ph.D. (Columbia University); LL.B. (University of Cambridge); LL.M. (University of Toronto). Formerly with Canada's Department of Foreign Affairs, Dr. Hertz is now a Senior Advisor in Canada's Privy Council Office supporting the Prime Minister and the Federal Cabinet.

1. JAMES JOLL, *THE ORIGINS OF THE FIRST WORLD WAR* 240 (2nd ed., 1992).

aristocrat, Alexis de Tocqueville (1805-1859):

(1) It first signifies the esteem, glory, or reverence that a man receives from his fellow men; and in this sense a man is said 'to acquire honour' (*conquérir de l'honneur*). (2) Honour signifies the aggregate of those rules by the aid of which this esteem, glory, or reverence is obtained. Thus we say that 'a man has always strictly obeyed the laws of honour'; or 'a man has violated his honour'.²

According to German archivist and military historian Karl Demeter: "Honour can be either a condition or a reflex, subjective or objective: it can be purely personal or it can be collective."³ Similarly, University of Chicago anthropologist Julian Pitt-Rivers observed: "Honour is the value of a person in his own eyes, but also in the eyes of his society. It is his estimation of his own worth, his *claim* to pride, but it is also the acknowledgement of that claim, his excellence recognized by society, his *right* to pride."⁴ Honour is a manifestation of what U.S. political philosopher Francis Fukuyama describes when he points to man's desire for recognition: "People believe that they have a certain worth, and when other people treat them as though they are worth less than that, they experience the emotion of *anger*. Conversely, when people fail to live up to their own sense of worth, they feel *shame*, and when they are evaluated correctly in proportion to their worth, they feel *pride*."⁵

Honour's significance is something the 21st century grasps poorly, because *as honour*, the concept is now virtually obsolete and the "vocabulary of honour has acquired archaic overtones in modern English."⁶ De Tocqueville shrewdly perceived that honour's obsolescence parallels the eclipse of aristocracy: "The dissimilarities and inequalities of men gave rise to the notion of honor; that notion is weakened in proportion as these differences are obliterated, and with them it would disappear."⁷ Thus, the shift from an aristocratic to a bourgeois culture caused aristocratic honour to fade in favour of middle-class public opinion—the latter perhaps featuring as frequently in modern political discourse as did the former in previous times.⁸ However, an important subset of what was once called

2. ALEXIS DE TOCQUEVILLE, 2 DEMOCRACY IN AMERICA 230 n.1 (Phillips Bradley ed., Henry Reeve & Francis Bowen trans., New York 1953).

3. KARL DEMETER, THE GERMAN OFFICER-CORPS IN SOCIETY AND STATE 1650-1945 Part 3: Honour 111 (Angus Malcolm trans., London, 1965) [hereinafter GERMAN OFFICER-CORPS].

4. Julian Pitt-Rivers, *Honour and Social Status*, in HONOUR AND SHAME: THE VALUES OF MEDITERRANEAN SOCIETY 21 (J.G. Peristiany ed., London 1965) [hereinafter *Honor and Social Status*]; for links to hierarchy and self-consciousness, see NORBERT ELIAS, THE GERMANS: POWER STRUGGLES AND THE DEVELOPMENT OF HABITUS IN THE NINETEENTH AND TWENTIETH CENTURIES 96 (Michael Schröter ed., New York, 1996).

5. FRANCIS FUKUYAMA, THE END OF HISTORY AND THE LAST MAN xvii (New York, 1992).

6. Julian Pitt-Rivers, *Honor*, in 5 INTERNATIONAL ENCYCLOPEDIA OF THE SOCIAL SCIENCES 510 (David L. Sills ed. New York, 1968); Peter Berger, *On the Obsolescence of the Concept of Honour*, in LIBERALISM AND ITS CRITICS 149-158 (Michael J. Sandel ed., New York, 1984).

7. DE TOCQUEVILLE, 2 DEMOCRACY IN AMERICA 242, *supra* note 2.

8. See W. Phillips Davison, *Public Opinion*, in 13 INTERNATIONAL ENCYCLOPEDIA OF THE SOCIAL SCIENCES 193; see also J.A.W. Gunn, *Public Opinion*, in POLITICAL INNOVATION AND

honour survives today in the narrower concept of prestige among States.⁹ In a detailed examination of the goals of foreign policy, French political scientist Raymond Aron (1905-1983) argued: "Political units are in competition: the satisfactions of *amour-propre*, victory or prestige, are no less real than the so-called material satisfactions, such as the gain of a province or a population."¹⁰

The Duke of Wellington probably never said "the battle of Waterloo was won on the playing-fields of Eton," but élite education in Europe specifically tried to inculcate a cult of honour, in part to support the officer corps.¹¹ Thus, honour was identified as an essential component of "the genius for war" by Prussian soldier and writer Carl von Clausewitz (1780-1831):

Of all the noble feelings... in the exciting tumult of battle, none... are so powerful and constant as the soul's thirst for honour and renown, which the German language treats so unfairly... in the words *Ehrgeiz* (greed of honour) and *Ruhmsucht* (hankering after glory)... Has there ever been a great Commander destitute of the love of honour, or is such a character even conceivable?¹²

But, Clausewitz caustically criticised courtly 18th century generals so taken with "the conception, *Honour of Victory*" that they failed to exploit their triumph by vigorously pursuing the enemy.¹³

Proposing the Legion of Honour's creation, Napoleon remarked (May 4, 1802): "I do not believe that the French people love liberty and equality. The French are not changed by ten years of revolution. They are what the Gauls were, proud and frivolous. They believe in one thing: Honor!"¹⁴ Similarly, Swiss historian Jacob Christoph Burckhardt (1818-1897) observed that honour "has become, in a far wider sense than is commonly believed, a decisive rule of conduct

CONCEPTUAL CHANGE 247-65 (Terence Ball et al. eds., Cambridge, 1989); Bernadotte E. Schmitt, *The Relation of Public Opinion and Foreign Affairs Before and During the First World War*, in *STUDIES IN DIPLOMATIC HISTORY IN HONOUR OF G.P. GOOCH* 322-30 (Arshag Ohan Sarkissian ed., London, 1961); for aristocratic honour's replacement by a bourgeois moral code, see Elias, *supra* note 4, at 96-97; see also Jean Renoir's film *La Grande Illusion* (Home Vision Entertainment 1937).

9. See ROBERT GILPIN, *WAR AND CHANGE IN WORLD POLITICS* 30-34 (Cambridge Univ. Press 1981).

10. RAYMOND ARON, *PEACE AND WAR: A THEORY OF INTERNATIONAL RELATIONS* 91 (Richard Howard and Annette Baker Fox trans., New York 1966).

11. See ELIZABETH LONGFORD, *WELLINGTON: THE YEARS OF THE SWORD* 16-17 (Harper & Row 1969); for British officers' honour at Waterloo, see JOHN KEEGAN, *THE FACE OF BATTLE: A STUDY OF AGINCOURT, WATERLOO AND THE SOMME* 189-92 (The Viking Press 1976); for military honour, see GERMAN OFFICER-CORPS, *supra* note 3, at 110-54; NORMAN DIXON, *ON THE PSYCHOLOGY OF MILITARY INCOMPETENCE* 196-207 (Basic Books 1976); for élite education, see GWYN HARRIES-JENKINS, *THE ARMY IN VICTORIAN SOCIETY* 277-78 (Univ. of Toronto Press 1977); D. C. B. LIEVEN, *RUSSIA AND THE ORIGINS OF THE FIRST WORLD WAR* 83-86 (St. Martin's Press 1983) [hereinafter *Russia*]; DOMINIC LIEVEN, *THE ARISTOCRACY IN EUROPE, 1815-1914* 161-64, 171-72, 177, 191-92, 195-96 (Macmillan 1992) [hereinafter *ARISTOCRACY IN EUROPE*]; HAROLD NICOLSON, *SIR ARTHUR NICOLSON, FIRST LORD CARNOCK: A STUDY IN THE OLD DIPLOMACY* 7-8 (Constable & Co. 1930).

12. CARL VON CLAUSEWITZ, *ON WAR* bk. I, ch. 3:146 (Anatol Rapoport ed. and J.J. Graham trans., Penguin Books 1968).

13. *Id.* at bk. IV, ch. 12:352.

14. SANCHE DE GRAMONT, *THE FRENCH PORTRAIT OF A PEOPLE* 309 (Putnam 1969).

for the cultivated Europeans of our own day, and many who still hold faithfully by religion and morality are unconsciously guided by this feeling in the gravest decisions."¹⁵

The same bourgeois experience was recently described by Yale University historian Peter Gay who indicts 19th century honour-fixated societies for spawning hatred:

Touchiness on the great matter of honor was extreme. All significant aspects of life—rites of passage, social intercourse, the choice of a mate, orders of rank and precedence, even commercial transactions—were meticulously regulated and subject to obsessively enforced rituals. Affronts, whether real or trumped up, had to be avenged with the most extreme remedies at hand. . . . Men felt compelled to display and continuously reaffirm their manhood from the time they were striplings, to prove their hardihood, their sheer physical strength, and their tenacious endurance of the bodily suffering that their risk-seeking lives necessarily entailed. For societies living by heroic codes, prestige was the cherished aim, pain the necessary test, disgrace a perpetual threat; autonomy was sacrificed to the good opinion of others.¹⁶

B. Was Honour a Staple of Political Philosophy?

“Honour” was until the 20th century a central construct in European socio-political thought and a commonplace in works of law and political philosophy. Niccolò Machiavelli (1469-1527) was a Florentine public servant, diplomat and political writer. Following a 14th century trail blazed by Petrarch,¹⁷ Machiavelli deplored Christianity’s emphasis on humility and heaven. He instead urged individual *virtù* (manliness, courage, pluck, fortitude, boldness, valour, steadfastness, tenacity)¹⁸ to gain honour and glory—perhaps man’s highest pleasure.¹⁹ Machiavelli’s writings reveal honour’s several faces which are generally linked to *virtù*. According to U.S. political theorist Leo Strauss (1899-1973):

For Machiavelli, the honorable is that which gives a man distinction or which makes him great and resplendent. Hence extraordinary virtue rather than ordinary virtue is honorable. To possess extraordinary virtue and to be aware of one’s possessing it is more honorable than merely to possess it. To have a sense of

15. JACOB BURCKHARDT, *THE CIVILIZATION OF THE RENAISSANCE IN ITALY* 304 (S.G.C. Middlemore trans. and Irene Gordon ed., Modern Library 1960).

16. PETER GAY, *THE CULTIVATION OF HATRED* 112 (W M Norton & Co. 1993).

17. See QUENTIN SKINNER, *THE FOUNDATIONS OF MODERN POLITICAL THOUGHT; VOL. ONE: THE RENAISSANCE* 100 (Cambridge Univ. Press 1978).

18. Relevant 16th century meaning survives in 1 OSCAR BULLE & GIUSEPPE RIGUTINI, *DIZIONARIO ITALIANO-TEDESCO E TEDESCO-ITALIANO* 905 (Leipzig-Milan, 1896); for Machiavelli, *virtù* was whatever qualities the prince needed “to keep his state,” see, SKINNER *supra*, note 17, at vol. 1:138.

19. See LEO STRAUSS, *THOUGHTS ON MACHIAVELLI* 189, 291 (The Free Press 1958).

one's superior worth and to act in accordance with that sense is honorable. Hence it is honorable to rely on oneself and to be frank when frankness is dangerous. To show signs of weakness or to refuse to fight is dishonorable. To make open war against a prince is more honorable than to conspire against him. To lose by fighting is more honorable than to lose in any other way. To die fighting is more honorable than to perish through famine.²⁰

Although Machiavelli was outstanding in stressing dissimulation and even brutality, he was entirely with his contemporaries in seeing honour, glory and fame as the prince's ultimate goal.²¹

The image of the "gentleman," including the cult of honour, was a Renaissance icon.²² Italian historian and statesman Francesco Guicciardini (1483-1540) included many references to honour, good name, reputation, dignity, greatness, glory and fame in his celebrated *Ricordi* composed over the years from 1512 to 1530.²³ The emphasis on honour was also natural for Emperor Charles V who was steeped in chivalry as Grand Master of the Burgundian Order of the Golden Fleece. When chided for failing to follow Julius Caesar in fully exploiting victories, Charles replied: "The ancients had only one goal before their eyes, honor. We Christians have two, honor and the salvation of the soul."²⁴ In entrusting Spain to his son Philip II, Charles advised (1543) Philip "to take as examples all those who have made good their want in age and experience by their courage and zeal in the pursuit of honour" and to study as "the only means by which you will gain honour and reputation."²⁵

Some years later, French lawyer and political philosopher Jean Bodin (1530-1596) divided social rewards into the profitable and the honourable, with a preference for the latter: "For as a generous and noble minded man doth more esteem honour than all the treasure of the world; so without doubt he will willingly sacrifice his life and goods for the glory he expects—and the greater the honours be, the more men there will be of merit and fame."²⁶ This was consistent with the understanding of French magistrate and essayist, Michel de Montaigne (1533-

20. STRAUSS, *supra* note 19, at 235-236.

21. See SKINNER, *supra* note 17, at vol. 1:100-01, 118-21, 130-32.

22. See J. H. PLUMB, *THE HORIZON BOOK OF RENAISSANCE* 313-19 (American Heritage Publishing Co 1961); J. H. PLUMB, *THE ITALIAN RENAISSANCE: A CONCISE SURVEY OF ITS HISTORY AND CULTURE* 119-125 (Harper & Row 1965).

23. See FRANCESCO GUICCIARDINI, *RICORDI* (1st ser.) §§ 1, 11, 18-9, 34, 45, 57, 59-60, 69, 73, 87, 89, 105-6, 125, 137-38, 141, 149, 151, 164, 167-68, 174; 2nd ser., §§ 4, 15-17, 32, 42, 44, 72-3, 86, 104, 118, 133, 142, 150, 157-58, 179, 181, 192, 194, 202, 217, 219 (Ninian Hill Thomson trans., S. F. Vanni 1949).

24. JACOB BURCKHARDT, *ON HISTORY AND HISTORIANS* 123 (Harry Zohn trans., Harper & Row 1965).

25. The full text of the 1543 Political Testaments are in KARL BRANDI, *THE EMPEROR CHARLES V: THE GROWTH AND DESTINY OF A MAN AND OF A WORLD-EMPIRE* 486-87 (C.V. Wedgwood trans., Jonathan Cape 1965).

26. JEAN BODIN, *V THE SIX BOOKES OF A COMMONWEALE: A FACSIMILE REPRINT OF THE ENGLISH TRANSLATION OF 1606, CORRECTED AND SUPPLEMENTED IN THE LIGHT OF A NEW COMPARISON WITH THE FRENCH AND LATIN TEXTS* 585-86 (Kenneth Douglas McRae ed., Harvard Univ. Press 1962).

1592): "Of all the delusions in the world, the most fully accepted and most universal is the seeking for fame and glory, which we espouse to the point of giving up wealth, repose, life, and health, which are real and substantial goods, to follow that airy phantom. . . ."²⁷

In late 16th century England, Shakespeare's plays put relatively strong emphasis on "honour."²⁸ And, in the same English context, Oxford University Regius Professor of Civil Law, Alberico Gentili (1552-1608) included a chapter on "conflict between what is honourable and expedient" in his *Three Books on the Law of War*: "Honour (*honestas*) is so highly valued that it takes precedence over what is lawful, and may even be sought at the expense of a certain amount of injustice. For the sake of honour (*honestatis caussa*), says Augustine, we should give up what is lawful but would be advantageous only to a part of mankind."²⁹ A generation later, Dutch diplomat, lawyer and father of international law Hugo Grotius (1583-1645) discussed, with reference to wartime, "with what meaning a sense of honour (*pudor*) may be said to forbid what the law permits."³⁰

English philosopher Thomas Hobbes (1588-1679) was preoccupied with honour³¹ which he carefully defined:

The manifestation of the value we set on one another is that which is called honoring and dishonoring. To value a man at a high rate is to honor him, at a low rate is to dishonor him. But high and low, in this case, is to be understood by comparison to the rate that each man sets on himself.³²

French lawyer, political philosopher and aristocrat Charles de Montesquieu (1689-1755) identified honour as the key principle distinguishing monarchies, from republics on the one hand, and from despotisms on the other.³³ Honour was

27. Montaigne, *Of Not Giving Away One's Glory*, in 1 ESSAYS OF MONTAIGNE bk. I, ch. 41:341 (George B. Ives trans., Cambridge, Mass., 1925).

28. See JOHN BARTLETT, A NEW AND COMPLETE CONCORDANCE OR VERBAL INDEX TO WORDS, PHRASES AND PASSAGES IN THE DRAMATIC WORKS OF SHAKESPEARE WITH A SUPPLEMENTARY CONCORDANCE TO THE POEMS (Macmillan and Co. 1896), e.g., in descending no. of cols. per entry: "love," "loved," "lover" & "loving" (28.5); "king" & "kingdom" (17.3); "speak" (13); "time" (13); "heart" (12); "true," "truly" & "truth" (11); "honour," "honourable" & "honoured" (10); "heaven" (9.2); "life" (9); "fear" & "fearful" (8); "word" (8); "world" (7.2); "woman" (7); "grace" (6); "soul" (5.5); "hope" (4.8); "desire" & "desired" (4.6); "wit" (4.6); "war" (4.5); "wisdom" & "wise" (4); "state" (4); "tear" (4); "wrong" (4); "virtue" (3.6); "law" & "lawful" (3.5); "favour" (3); "home" (3); "spirit" (3); "faith" (2.5); "fault" (2.5); "sorrow" (2.5); "swear" (2.5).

29. Alberico Gentili, *On Conflict Between Honour and Expediency (Si utile cum honesto pugnet)*, in DE JURE BELLI LIBRI TRES bk. III, ch. 12: vol. 1 at 572 (Latin); vol. 2 at 350 (English). (James Brown Scott ed. Oxford 1933).

30. HUGO GROTIUS, DE JURE BELLI AC PACIS LIBRI TRES bk. III, ch. 10, § 1:716 (James Brown Scott ed., New York, 1925).

31. See RICHARD PETERS, HOBBS 142 (2nd ed. Penguin Books 1967).

32. THOMAS HOBBS, LEVIATHAN part 1, ch. 10:78-86, at 79 (Herbert W. Schneider ed., Prentice Hall College Edition 1958).

33. See CHARLES DE SECONDAT, BARON DE MONTESQUIEU, THE SPIRIT OF LAWS bk. III, chs. 6-8,

portrayed as monarchy's actuating spring because nobles serving the king, were motivated by the quest for position and precedence. But, Montesquieu also saw honour as a common code limiting the power and guiding the conduct of king and noble alike: "There is nothing so strongly inculcated in monarchies, by the law, by religion and honour as submission to the prince's will; but this very honour tells us that the prince never ought to command a dishonourable action, because this would render us incapable of serving him."³⁴

German philosopher and mathematician Christian Wolff (1679-1754) provides rich evidence showing that the 18th century was incapable of describing the international system without referring to honour's vocabulary. Setting out the "duties of nations to themselves and the rights arising therefrom," his systematic treatise includes substantive paragraphs on "the necessity of not bringing disgrace on one's nation," "zeal for the reputation (*fama*) of one's nation," "what fame (*gloria*) is," "the fame (*gloria*) of a nation," "the desire for fame (*gloria*)" and "how far this applies to the ruler of the State."³⁵

"Which man is insensible to the attractions of glory? It is the last passion of the sage. Even the most austere philosophers cannot uproot it. What are exhaustion, troubles and dangers in comparison with glory? It is a passion so mad that I cannot at all conceive how it does not turn everyone's head."³⁶ These were the words of Prussia's King Frederick the Great (1712-1786) who believed:

A good prince's true merit is to have a sincere attachment to the public good, to love his country and glory: I say 'glory' because the happy instinct which animates men with the desire for a good reputation is the real principle of heroic actions; it is the soul's nerve, awakening it from lethargy to carry it towards useful, necessary and praiseworthy enterprises.³⁷

As early as 1790, British parliamentarian and political writer Edmund Burke (1729-1797) denounced the French Revolution's "grim and bloody maxims" as antithetical to a unique European notion of honour drawn from medieval chivalry. For Burke, "the spirit of a gentleman" was fundamental to Europe's civilization:

It was this which, without confounding ranks, had produced a noble equality and handed it down through all the gradations of social life. It was this opinion which mitigated kings into companions and raised private men to be fellows with kings. Without force or opposition, it subdued the fierceness of pride and power, it

10-11; bk. IV, ch. 2; bk. V, chs. 16-19; bk. VI, ch. 21; bk. VIII, ch. 9; bk. XII, ch. 27 (Thomas Nugent trans., revised by J.V. Prichard Chicago 1952).

34. *Id.* at bk. IV, ch. 2.

35. CHRISTIAN WOLFF, *JUS GENTIUM METHODO SCIENTIFICA PERTRACTUM* ch. 1, §§ 45-51; vol. I:17-19 (Latin); vol. 2:30-33 (English) (Otfried Nippold ed., Oxford 1934).

36. LES PLUS BELLES PAGES DE FREDERIC II 110-111 (Charles-Adolphe Cantacuzène ed. Paris, 1935).

37. *Histoire de mon temps, avant-propos de 1775*, in 1 MEMOIRES DE FREDERIC II, ROI DE PRUSSE: ECRITS EN FRANÇAIS PAR LUI-MEME 4-5 (E. Boutaric & E. Campardon eds., Paris, 1866) [hereinafter MEMOIRES DE FREDERIC II]; Frederick to D'Alembert, Sep. 26, 1770, in 11 OEUVRES POSTHUMES DE FREDERIC II, ROI DE PRUSSE 88 (Berlin 1788).

obliged sovereigns to submit to the soft collar of social esteem, compelled stern authority to submit to elegance, and gave a dominating vanquisher of laws to be subdued by manners.³⁸

C. The "Word of Honour" and Courtly Society

Keeping a promise as "word of honour" was similar, but not identical to the *pacta sunt servanda* (agreements must be kept) of natural and canon law, which for a long time were less effective than honour in encouraging treaty compliance by successors. As long as there was a sense in which treaties remained the contracts of kings, performance profited from dynastic honour as a recognized framework for a son's feeling bound by his father's treaty. This consciousness of family obligation alleviated difficulties about succession to natural law promises and transcended the limitations of the oath, by which a king could imperil his own soul, but not that of his son.

With honour, the context was neither natural nor canon law, but rather a related socio-religious norm emerging from the ethical and aesthetic ideals of the late Middle Ages, when—according to Dutch historian Johan Huizinga (1872-1945)—the "thought of all those who lived in the circles of court or castle was impregnated with the idea of chivalry" and "permeated by the fiction that chivalry ruled the world."³⁹ Pertinent here is the emphasis which medieval chivalry had placed on vows, steadfastness, "keeping faith" and "remaining true to one's word."⁴⁰ This phenomenon was understood by De Tocqueville who perceptively saw the link with the key medieval institution of allegiance: "Every man looked up to an individual whom he was bound to obey; by that intermediate personage he was connected with all the others. Thus, in feudal society, the whole system of the commonwealth rested upon the sentiment of fidelity to the person of the lord; to destroy that sentiment was to fall into anarchy."⁴¹ Huizinga was understandably surprised that Belgian lawyer Ernest Nys (1851-1920), after so much study of international law's history,⁴² had missed the key contribution of chivalric ideas—including "fidelity to one's given word."⁴³ Huizinga was convinced by 14th century sources that "the system of chivalric ideas as a noble game of rules of

38. EDMUND BURKE, REFLECTIONS ON THE REVOLUTION IN FRANCE 86-90, at 87 (Thomas H.D. Mahoney ed. MacMillan Publishing Co. 1955).

39. JOHAN HUIZINGA, THE WANING OF THE MIDDLE AGES: FORMS OF LIFE, THOUGHT AND ART IN FRANCE AND THE NETHERLANDS IN THE XIVTH AND XVTH CENTURIES 67-107 (Doubleday 1954).

40. ROBERT PLUMER WARD, 2 AN ENQUIRY INTO THE FOUNDATION AND HISTORY OF THE LAW OF NATIONS FROM THE TIME OF THE GREEKS AND ROMANS TO THE AGE OF GROTIUS 159, 161, 167, 174-88, 205 (London 1795); JAMES KENT, KENT'S COMMENTARY ON INTERNATIONAL LAW 26 (J.T. Abdy ed., 2d. ed. rev., Cambridge 1878); ROBERT REDSLOB, HISTOIRE DES GRANDS PRINCIPES DU DROIT DES GENS: DEPUIS L'ANTIQUITÉ JUSQU'À LA VEILLE DE LA GRANDE GUERRE 122 (Paris 1923).

41. DE TOCQUEVILLE, 2 DEMOCRACY IN AMERICA 245-46, *supra* note 2.

42. See ERNEST NYS, LES ORIGINES DU DROIT INTERNATIONAL (Brussels-Paris 1894).

43. Johan Huizinga, *The Political and Military Significance of Chivalric Ideas in the Late Middle Ages*, in MEN AND IDEAS: HISTORY, THE MIDDLE AGES, THE RENAISSANCE 196-206, at 204 (James S. Holmes & Hans van Marle trans., Meridian Books 1959).

honor" was linked to international law: "The origins of the latter lay in antiquity and in canon law, but chivalry was the ferment that made possible the development of the laws of war. The notion of a law of nations was preceded and prepared for by the chivalric ideal of honor and loyalty."⁴⁴

The enduring focus on honour was reflected in the European obsession with reputation. For example, scrupulous treaty performance was seen as giving rise to "true grandeur and solid glory" by Charles Rollin (1661-1741), classical historian and former Rector of the University of Paris.⁴⁵ The importance of keeping promises was also affirmed by Francis Osborne, Duke of Leeds, who resigned (April 21, 1791) as Foreign Secretary after parliamentary pressure prompted Prime Minister William Pitt the younger to cancel planned naval demonstrations against Russia. Because the help of the warships had already been promised to Prussia's King Frederick William II, Leeds saw personal and national honour lost by Britain's volte-face.⁴⁶ In 1864, future Prime Minister Lord Salisbury (as MP Lord Robert Cecil) emphasized: "One promise is as good as a hundred, and one disregarded promise casts upon the escutcheon of a country disgrace which is only increased in degree by multiplied repetitions."⁴⁷ Evidently, this was a sentiment understood by U.S. Supreme Court Associate Justice John Marshall Harlan (1833-1911) who opined:

Aside from the duty imposed by the constitution to respect treaty stipulations when they become the subject of judicial proceedings, the court cannot be unmindful of the fact that the honor of the government and the people of the United States is involved in every inquiry whether rights secured by such stipulations shall be recognized and protected.⁴⁸

Lying for reasons of State was similarly condemned roundly by 18th century diplomat Lord Malmesbury:

No occasion, no provocation, no anxiety to rebut an unjust accusation, no idea, however tempting, of promoting the object you have in view, can need, much less justify, a falsehood. Success obtained by one is a precarious and baseless success. Detection would ruin, not only your own reputation forever, but deeply wound the

44. *Id.* at 203.

45. See M. Rollin, 2 DE LA MANIERE D'ENSEIGNER ET D'ETUDIER LES BELLES LETTRES, PAR RAPPORT A L'ESPRIT & AU CŒUR 55-56, 65, 70 (Paris, 1740).

46. Sending ships was "manly and consistent conduct" in conformity with "honour," the contrary "disgraceful" exhibition of "caution bordering upon timidity," see THE POLITICAL MEMORANDA OF FRANCIS, FIFTH DUKE OF LEEDS ix-x, 150-174 (Oscar Browning ed., Camden Society, new ser., no. 35, London 1884); the reversal was arguably consistent with the explicitly defensive 1742 and 1788 Anglo-Prussian treaties, see 36 THE CONSOLIDATED TREATY SERIES 498-503, and 50 THE CONSOLIDATED TREATY SERIES 333-338, 354-358 (Clive Parry ed., Oceanna Publication 1969-1981) [hereinafter CTS]; FOUNDATIONS OF BRITISH FOREIGN POLICY FROM PITT (1792) TO SALISBURY (1902) 1 (Harold Temperley & Lillian M. Penson eds., Barnes & Noble 1966); for the "armament" against Russia, see JEREMY BLACK, BRITISH FOREIGN POLICY IN AN AGE OF REVOLUTIONS, 1783-1793 285-328 (Cambridge Univ. Press 1994).

47. Jul. 5, 1864, 176 PARL. DEB. (COMMONS) 851 (3rd ser.).

48. *Chew Heong v. United States*, 112 U.S. 536, 5 S.Ct. 255 at 256, 28 L.Ed 770 (1884).

honour of your Court.⁴⁹

This rhetoric exemplifies the imperative of honouring both truth and promises that was a key ingredient of the chivalric archetype, perpetuated and transformed by the “courtly-aristocratic” society, which held sway in Europe until mostly swept away during the First World War.⁵⁰

D. Was the King's Honour Nationalized?

By the 18th century, the very old notion of the king's honour had mingled with the closely related idea of the honour of the State or nation.⁵¹ According to De Tocqueville: “In some nations the monarch is regarded as a personification of the country; and the fervor of patriotism being converted into the fervor of loyalty, they take a sympathetic pride in his conquests, and glory in his power.”⁵² For example, King George III explicitly identified his personal honour with that of Britain—a sentiment seconded by the pseudonymous Junius: “The king's honour is that of his people. Their real honour and real interest are the same.”⁵³ This link was no less compelling for soldier-diplomat and adventurer, Sir Robert Wilson who (1826) urged Parliament “to uphold with a strong hand the honour and interest

49. Sir James Harris, 1st Earl of Malmesbury (1746-1820), *quoted by* Algernon Cecil, *The Foreign Office*, in 3 THE CAMBRIDGE HISTORY OF BRITISH FOREIGN POLICY 1783-1919 551 (Sir A.W. Ward & G.P. Gooch eds., Cambridge 1923); “feelings of morality and honour” caused 2nd Earl of Malmesbury, James Edward Harris (1778-1841) to resign as Under-Secretary of State for Foreign Affairs because national security forced him to lie about Britain's plans to seize the fleet of neutral Denmark, *see* 3rd EARL OF MALMESBURY, JAMES HOWARD HARRIS (1807-1889), 1 MEMOIRS OF AN EX-MINISTER: AN AUTOBIOGRAPHY 1-2 (London 1884).

50. For the knight/courtier transition and courtly-aristocratic society's enduring impact, *see* NORBERT ELIAS, THE CIVILIZING PROCESS: THE HISTORY OF MANNERS AND STATE FORMATION AND CIVILIZATION 168-78, 266-72 (Edmund Jephcott trans., Blackwell 1994); for chivalry's deep mark on Western civilization, *see* GERMAN OFFICER-CORPS, *supra* note 3, at 115; for the pre-1914 “sumptuous neo-absolutist court culture,” *see* JOHN C.G. RÖHL, THE KAISER AND HIS COURT: WILHELM II AND THE GOVERNMENT OF GERMANY 70-106 (Cambridge Univ. Press 1994); for 19th century chivalry and its 1914-18 death, *see* MARK A. GIROUARD, THE RETURN TO CAMELOT: CHIVALRY AND THE ENGLISH GENTLEMAN 290 (Yale Univ. Press 1981).

51. *See* Norman Hampson, *The French Revolution and the Nationalisation of Honour*, in WAR AND SOCIETY: HISTORICAL ESSAYS IN HONOUR AND MEMORY OF J.R. WESTERN 199-212 (M.R.D. Foot ed., London 1973); GEOFFREY BEST, HONOUR AMONG MEN AND NATIONS: TRANSFORMATIONS OF AN IDEA (Univ. of Toronto Press 1982); for the shift to “national honour” marking nationalism's rise, *see* ALFRED VAGTS, A HISTORY OF MILITARISM: CIVILIAN AND MILITARY 442-50 (rev. ed. New York 1959); for “collective honour,” *see* *Honour and Social Status*, *supra* note 4, at 35-36.

52. DE TOCQUEVILLE, 1 DEMOCRACY IN AMERICA 251, *supra* note 2; Hanna Fenichel Pitkin, *Representation*, in POLITICAL INNOVATION AND CONCEPTUAL CHANGE 132-154, at 138 (Terence Ball et al. eds., Cambridge Univ. Press) (“It is a medieval and mystical conception: the king is not merely the head of the national body, not merely the owner of the entire realm, but he *is* the crown, the realm, the nation.”).

53. Letters from George III to Lord Bute 1756-1766 (Romney Sedgwick ed., London 1939), No. 205, Oct. 22, 1762: 149; Letter to the Printer of the *Public Advertiser*, Jan. 30, 1771, No. 42, in 2 THE LETTERS OF JUNIUS 55 (London, 1810); for information about the mysterious Junius, *see* STANLEY AYLING, GEORGE THE THIRD (London, 1972), 164-167.

of the Crown, which in this country are inseparable from the honour and interest of the people."⁵⁴ Similarly, Lord Salisbury said on Prime Minister Benjamin Disraeli's death: "The honour of the Crown and the honour of the country were in his mind inseparable: and in comparison to them, questions of internal policy occupied a secondary rank."⁵⁵

Christian Wolff had already taught that "the ruler of a state ought to direct the royal acts to the glory of his nation (*gloria Gentis*), consequently to do nothing to diminish or destroy it."⁵⁶ For him, fame (*gloria*) meant "*ein grosser Name*" (a great name): "Fame (*gloria*) is primarily and of itself attributed to the nation, because it is considered as a single person, which has its own actions dependent upon intellectual and moral virtues; but even more is it attributed to it, because the renown (*laus*) of individuals is passed over to it on account of acts or deeds which are considered as those of the individuals."⁵⁷ Similarly, Charles Jenkinson (later 1st Lord Liverpool) was in 1758 comfortable declaiming: "Great and wise governments have always been jealous of national glory: it is an active principle, which properly cultivated, operates in virtuous actions through every member of the State. To preserve this in its purity is the duty of everyone who loves his country."⁵⁸

It was entirely natural for France's new National Assembly to speak (1792) of "the offended dignity of the French people" and for British Foreign Secretary Lord Grenville to defend "the dignity and honour of England."⁵⁹ Similarly, "the glory of the French people" was rhetoric Napoleon used to encourage soldiers in the 1796 campaign in Italy.⁶⁰ After Allied victory at Waterloo (1815), the Duke of Wellington and other British statesmen judged sparing France's "national honour" to be a key consideration in framing peace terms.⁶¹ In the 19th century such

54. 16 PARL. DEB. (2d ser.) (1826) 336.

55. Letter to Queen Victoria, Apr. 25, 1881, 3 THE LETTERS OF QUEEN VICTORIA 216 (2nd ser.) (George Earle Buckle ed., London 1926) [hereinafter LQV].

56. Wolff, *supra* note 35, at ch. 1, § 51, vol. 1:19; vol. 2:33.

57. Wolff, *supra* note 35, at ch. 1, § 48, vol. 1:18; vol. 2:31-32.

58. CHARLES JENKINSON, A DISCOURSE ON THE CONDUCT OF THE GOVERNMENT OF GREAT BRITAIN, IN RESPECT TO NEUTRAL NATIONS, DURING THE PRESENT WAR 7 (2d ed., London 1759).

59. *Statement of French Foreign Policy, Apr. 14, 1792*, in DOCUMENTARY SURVEY OF THE FRENCH REVOLUTION 284 (John Hall Stewart ed., New York 1951) [hereinafter Documentary Survey]; Grenville to French Ambassador, Marquis de Chauvelin, Dec. 31, 1792, in TEMPERLEY, *supra* note 46, at 5.

60. See Proclamation to the Army of Italy, Apr. 26, 1796, in DOCUMENTARY SURVEY, *supra* note 59 at 672-73.

61. See e.g., BRITISH DIPLOMACY 1813-1815: SELECT DOCUMENTS DEALING WITH THE RECONSTRUCTION OF EUROPE (C.K. Webster ed., G. Bell and Sons 1921). British Prime Minister Robert Banks Jenkinson, 2nd Earl of Liverpool, to Foreign Secretary Viscount Castlereagh negotiating peace in Paris, Jul. 15, 1815: "It is argued with much force that France will never forgive the humiliation which she has already received that she will take the first convenient opportunity of endeavouring to redeem her military glory," *id.* at 346; Liverpool to Castlereagh, Aug. 18, 1815: "An arrangement on this principle would have nothing in it which could really be considered as humiliating to France," *id.* at 368; Liverpool to Castlereagh, Aug. 23, 1815: "Such a stipulation need not, in our judgment, mortify the pride of the French nation," *id.* at 369; Castlereagh to Liverpool, Aug. 24, 1815: "... if you take part of old France and add it to Belgium, all France will, as a point of honour, be

references to national honour became increasingly common, especially in France, Britain and the few other countries where control of foreign policy was gradually shifting to a governing class which, according to British diplomat and historian Harold Nicolson (1886-1968), developed a corresponding feeling that "engagements entered into by the government pledged the honour of the class as a whole."⁶² Similarly, British historian A.J.P. Taylor (1906-1990) observed that pre-1914 treaties were no longer simply between monarchs, but "absorbed by public opinion" and therefore also between nations.⁶³

E. Honour in the International of Kings

During the 18th century, dynastic ties had been so important that mutual courtesies persisted even during wartime, when contending rulers exchanged letters of congratulation and condolence.⁶⁴ Such monarchical solidarity was fortified by the challenge of the French Revolution. After France's King and Queen were arrested (June 21, 1791) at Varennes, Marie Antoinette's brother, Habsburg Emperor Leopold II wrote to his fellow rulers that the detention violated "the honor of all sovereigns and the security of all governments."⁶⁵ In fact, 19th century European rulers were an interrelated family, mostly of German descent. According to British historian Eric Hobsbawm, these kings had "more in common with the other members of the international princes' trade union . . . than with their own subjects."⁶⁶ Similarly, Nicolson portrayed the post-1815 Concert of Europe as a *system of trust* operating via the *creation of confidence* and the *acquisition of credit* in an International of Monarchs—a freemasonry of kings.⁶⁷ Accordingly, he saw 19th century international relations as resting on "a tacit understanding between the five Great Powers that there were certain common standards of dignity, humanity and good faith which should govern the conduct of these powers in their relations with each other and in their dealings with less potent or less civilized communities."⁶⁸ Nicolson's nostalgia matches the authoritative contemporary view of longtime Austrian Chancellor Clemens von Metternich

anxious to regain it," *id.* at 371; British peace negotiator, the Duke of Wellington to Castlereagh, Paris, Aug. 31, 1815: ". . .the measure would afford to France a just pretence for war, and all the means which injured national pride could give for carrying it on," *id.* at 374; Castlereagh to Liverpool, Sep. 4, 1815: ". . .for objects that France may any day reclaim from the particular States that hold them, without pushing her demands beyond what she would contend was due to her own honour," *id.* at 376.

62. HAROLD NICOLSON, *DIPLOMACY* 90-91 (3rd ed. MacMillan 1963).

63. A.J.P. Taylor, *International Relations*, in *THE NEW CAMBRIDGE MODERN HISTORY, VOLUME 11: MATERIAL PROGRESS AND WORLD-WIDE PROBLEMS 1870-1898* 552 (F.H. Hinsley ed. Cambridge Univ. Press 1967).

64. See Andrew Lossky, *International Relations in Europe*, in *THE NEW CAMBRIDGE MODERN HISTORY, VOLUME 6: THE RISE OF GREAT BRITAIN AND RUSSIA, 1688-1715/25* 168-169 (J. S. Bromley ed. Cambridge 1970).

65. Padua Circular, Jul. 5, 1791, in *DOCUMENTARY SURVEY*, *supra* note 59, at 221-222; Adam Wandruszka, *2 LEOPOLD II* 360-369 (Vienna 1965).

66. Eric J. Hobsbawm, *THE AGE OF EMPIRE 1875-1914* 149 (London 1987).

67. See Nicolson, *supra* note 62, at 66-67, 245.

68. Nicolson, *supra* note 62, at 72.

whose philosophy of international relations was simply the principle of reciprocity in a community of States displaying *bon procédés*, i.e. "mutual consideration and honourable conduct."⁶⁹

From the vantage point of the First World War, British international lawyer Coleman Phillipson reflected that the Concert had functioned tolerably well as long as governments continued to prize "honour, fidelity and good report" and have a strong "desire to stand well with their fellows."⁷⁰ Consonant with these values was the dictum of former Foreign Secretary and future Prime Minister Lord Grenville (1802): "Loss of territory might be regained, commerce might be revived, and industry encouraged and invigorated; but honour and faith, once forfeited, could never [*sic*] be repaired but imperfectly."⁷¹ In the same vein, the future Lord Salisbury, as MP Lord Robert Cecil, insisted (1864) that "loss of dignity and honour is not a sentiment; it is a loss of power."⁷² Avoiding stain of dishonour was thus a key incentive promoting conformity with the rules making up a common code.

19th century monarchs and statesmen displayed real anxiety about peer judgment and frequently appealed to the standard of what would be honourable "in the eyes of Europe."⁷³ For example, Queen Victoria facilitated British foreign

69. Prince Clemens Lothar Wenzel von Metternich-Winneburg, 1 MEMOIRS OF PRINCE METTERNICH 1773-1815 37 (Prince Richard Clemens Lothar von Metternich-Winneburg ed. and Robina Napier trans., New York, 1880).

70. COLEMAN PHILLIPSON, INTERNATIONAL LAW AND THE GREAT WAR 50-51 (T. Fisher Unwin, 1915).

71. May 4, 1802, LORDS, 36 THE PARLIAMENTARY HISTORY OF ENGLAND FROM THE EARLIEST PERIOD TO THE YEAR 1803 588 (London, 1820).

72. Jul. 5, 1864, 176 PARL. DEB. H.C. (3d ser.). 851.

73. See Letter to Prime Minister Lord John Russell, Jul. 28, 1850, 2 LQV 306 (1st ser.) (Arthur Christopher Benson & Viscount Esher eds., London 1907) ("expose herself to insults of other nations"); Letter from Duke of Cambridge, Apr. 28, 1854, LQV, 1st ser., vol. 3:31 ("such position being highly honourable and advantageous to us in the eyes of Europe"); Letter to Foreign Secretary Lord Clarendon, Jan. 15, 1856, 3 LQV 207 (1st ser.) ("The Queen. . . cannot be for peace now, for she is convinced that this country would not stand in the eyes of Europe as she ought"); Letter to Foreign Secretary Lord John Russell, Apr. 26, 1860, 3 LQV 505 (1st ser.) ("The Queen. . . must say that she would consider it the deepest degradation of this country if she was compelled to appear at the Emperor's [Napoleon III] Congress"); Letter from Foreign Secretary Lord Granville, Jul. 10, 1870, 2 LQV 24 (2nd ser.) ("the goodwill of Europe"); Letter from Foreign Secretary Lord Derby, May 5, 1875, 2 LQV 389-90 (2nd ser.) ("No French Government would be insane enough to put itself in the wrong in the eyes of all Europe," and "Moral force goes for much in these days, and the sympathy of nations is always with the attacked party. In the last war, France was the aggressor, and the opinion of Europe went with Germany"); Letter from German Crown Princess, Dec. 19, 1877, 2 LQV 578 (2nd ser.) ("Ridicule and contempt England can very well stand, and laugh at the ignorance of the benighted people that know no better; but England *cannot*, or rather ought not to, afford to lose her position in Europe"); Letter from the Prince of Wales, Dec. 23, 1877, 2 LQV 580 (2nd ser.) ("We shall never again be able to hold up our head in the eyes of the world"); Queen's Priv. Secretary Sir Henry Ponsonby to Viscount Halifax, Jan. 5, 1878, 2 LQV 590 (2nd ser.) ("maintaining the high position which our nation holds in the world. . . the spectacle of indecision and weakness which lowers her in the esteem of the world"); Letter to Prime Minister Benjamin Disraeli, Jan. 16, 1878, 2 LQV 595 (2nd ser.) ("We shall become the laughing-stock of Europe and the world!!"); Letter from Grand Duchess of Hesse, Mar. 1, 1878, 2 LQV 605 (2nd ser.) ("Is [Foreign Secretary] Lord Derby really going to remain? He it is who shakes the confidence of all the world in England's policy").

policy by assiduously exploiting her private correspondence and family reunions to gather intelligence and cultivate influence in the exalted circle constituted by her royal relatives abroad.⁷⁴ Reminding her Prime Minister of “the importance of keeping our foreign policy beyond reproach,” she said: “Public opinion is recognised as a ruling power in our domestic affairs; it is not of less importance in the society of Europe with reference to the conduct of an individual state. To possess the confidence of Europe is of the utmost importance to this country.”⁷⁵ Victoria insisted that “the honour of England” touched *her* “more nearly than anyone else.”⁷⁶ She explained: “What my Ambassador does, he does in my name, and I feel myself bound in honour thereby, but also placed under an obligation to take upon myself the consequences.”⁷⁷ Moreover, the Queen claimed to have “public and personal obligations towards those Sovereigns with whom she professes to be on terms of peace and amity.”⁷⁸

At the beginning of the 20th century, King Edward VII was closely involved in British diplomacy, which ostentatiously exploited his encounters with other rulers, including the Habsburg, Hohenzollern and Romanov Emperors. Aimed at ending the old Anglo-French antagonism, his 1903 Paris visit was then seen as proof of his major role in foreign affairs.⁷⁹ However, the resulting Anglo-French *Entente Cordiale* (1904), by resolving some bilateral differences, pointed to Europe’s fateful split into two hostile camps—Germany and Austria-Hungary on the one side, and Britain, France and Russia on the other.⁸⁰ By then, the traditional pan-monarchic trust and confidence had waned, mainly because the balance among the European Powers had shifted so radically in Germany’s favour.⁸¹ Yet, kings kept their keen sense of personal and professional honour and pretended that diplomacy was still tied to their person, until they almost all lost their thrones during the First World War.⁸²

74. See DR. F. GOSSES, *THE MANAGEMENT OF BRITISH FOREIGN POLICY BEFORE THE FIRST WORLD WAR, ESPECIALLY DURING THE PERIOD 1880-1914* 102-04 (E.C. Van Der Gaaf trans., Leiden 1948).

75. Letter to Prime Minister Lord John Russell, Oct. 18, 1847, 2 LQV 156 (1st ser.).

76. Letter to Foreign Secretary Lord John Russell, Feb. 15, 1864, 1 LQV 158 (2nd ser.).

77. Letter to King of Prussia, Mar. 17, 1854, 3 LQV 21 (1st ser.).

78. Letter to Prime Minister Lord John Russell, Nov. 20, 1851, 2 LQV 397 (1st ser.).

79. See KEITH MIDDLEMASS, *THE LIFE AND TIMES OF EDWARD VII* 152-183 (Doubleday & Co 1972); SIMON HEFFER, *POWER AND PLACE: THE POLITICAL CONSEQUENCES OF KING EDWARD VII* (Phoenix Giant 1998).

80. On Apr. 8, 1904, France and Great Britain concluded in London three agreements comprising the *Entente Cordiale*, see CTS 195, Declaration respecting Egypt and Morocco, 198-204; Convention respecting Newfoundland and West and Central Africa, 205-12; Declaration concerning Siam, Madagascar and the New Hebrides, 214-16.

81. See F. H. HINSLEY, *POWER AND THE PURSUIT OF PEACE: THEORY AND PRACTICE IN THE HISTORY OF RELATIONS BETWEEN STATES* 270 (Cambridge Univ. Press 1963); PAUL KENNEDY, *THE RISE AND FALL OF THE GREAT POWERS: ECONOMIC CHANGE AND MILITARY CONFLICT FROM 1500 TO 2000* 215 (Random House 1988).

82. See NICOLSON, *supra* note 62, at 64; LAMAR CECIL, *THE GERMAN DIPLOMATIC SERVICE, 1871-1914* 191 (Princeton Univ. Press 1976); RÖHL, *supra* note 50, at 3-4, 71, 106, 115-120, 122-123, 127-128; *THE TIMES SURVEY OF FOREIGN MINISTRIES OF THE WORLD* 11 (Zara Steiner ed., Times

F. "Honour" and "Interest" as Rhetoric of British Foreign Policy

Compelling linguistic evidence shows that, at least until 1914-18, honour was one of the key categories for British thinking about foreign policy. Specifically, talk about international relations almost invariably involved doublets in which one element points to prestige (honour, glory, dignity, reputation, pride, position, standing) and another to a political assessment (interest, advantage, security, safety, victory, defeat, injury). This striking duplex featured in almost every foreign-policy debate in Parliament, and in a wide variety of State papers and political writing.

Burke's *Letters on a Regicide Peace* supported augmenting "national glory" and "public interest," and opposed sacrificing "national dignity" and "national acquisitions."⁸³ Examples abound in the debate on the 1801 preliminaries of peace with Napoleon. King George III approvingly said "substantial interests of this country, and honourable to the British character" and "advantage and honour." "To maintain the honour and preserve the security of the British Empire" were the words of Prime Minister Henry Addington. Sir Edmund Hartopp used "beneficial to our interests and reputation." Foreign Secretary Lord Hawkesbury, Viscount Limerick, and naval heroes Earl St. Vincent and Lord Nelson said "honourable and advantageous." William Pitt the younger employed "strength to our security and lustre to our national character," "to protect England's honour and maintain her interests," and "sources of justifiable pride, but grounds of solid security." Charles James Fox offered "safe and honourable" and "defence of our honour and our independence." Thomas Grenville protested "neither safe nor honourable." Earl Temple warned "dangerous to safety, and degrading to honour." Sir William Windham reproved with "degrading and injurious." William Elliot and Richard Ellison deplored losing "our honour and interests." "Dishonourable and insecure" was Earl Carnarvon's verdict.⁸⁴

Debating whether to aid Portugal (1826), future Lord Chancellor Henry Brougham offered "security or honour" and "credit and safety."⁸⁵ For foreign affairs, identical or similar doublets were favoured by Queen Victoria who got back the same from her Prime Ministers and Foreign Secretaries.⁸⁶ These doublets

Books 1982).

83. EDMUND BURKE, 2 *THE WORKS OF EDMUND BURKE* 265 (New York 1859).

84. 36 *Parliamentary History of England* 3 (King George); 16 (Addington); 30 (Hartopp); 39, 48 (Hawkesbury); 159 (Limerick); 184 (St. Vincent); 186 (Nelson); 58, 70-71 (Pitt); 72, 74 (Fox); 51-52 (Grenville); 54-55 (Temple); 130 (Windham); 146 (Elliot); 154 (Ellison); 187 (Carnarvon).

85. 16 *PARL. DEB.* (2d ser.) (1826) 383, 388.

86. For Victoria, see *THE QUEEN AND MR. GLADSTONE: 1880-1898* (Philip Guedalla ed. Hodder & Stoughton 1933), ("dignity & honour as well as the safety of her British & Foreign Empire," *id.* at 353; "honour and welfare of her great Empire," *id.* at 437); see also *LQV*: 1st ser., vol. 2:235 ("character and honour of England" and "the peace of Europe"); 1st ser., vol. 2:397 ("interests of her people, honour and dignity of her Crown"); 1st ser., vol. 3:237 ("honour and interests of this country"); 1st ser., vol. 3:395 ("honour, power, and peace of this country"); 1st ser., vol. 3:429-430 ("security of my dominions and honour of my Crown"); 2nd ser., vol. 1:158 ("imaginary interests" and "a supposed point of honour"); 2nd ser., vol. 1:231 ("safety and dignity of this country"); 2nd ser., vol. 1:419 ("every consideration of honour and every consideration of interest"); 2nd ser., vol. 1:592

were also exchanged in the impassioned speeches sparked by the 1864 Austro-Prussian attack on Denmark.⁸⁷ And, finally, Prime Minister Herbert Henry Asquith and Foreign Secretary Sir Edward Grey joined other MPs in repeatedly referring to Britain's "interest and honour" in the fateful August 1914 deliberations on war with Germany.⁸⁸

G. Was Honour Cultivated for Political Ends?

Still the centre of Western civilization, pre-1914 Europe had experienced a curious "persistence of the old regime."⁸⁹ This antediluvian age was marked by the enduring social supremacy of court aristocracies, the presence of lesser nobilities, and the co-optation of the upper middle classes which—in significant social, cultural and political respects—still aped the conduct and discourse of their "betters."⁹⁰ Because so much of the social and political role of king, court and aristocracy survived beyond 1900, perpetuated too was a matching ideology. For example, English literature in the two generations before 1914 often displayed a special rhetoric—a high, romantic diction that was "essentially feudal language"

("England . . . prepared to maintain the obligation of Treaties, wherever her honour or her interest may call"); 2nd ser., vol. 2:501 ("honour and interests of her great Empire"); 2nd ser., vol. 2:580 ("honour and interests of this country"); 2nd ser., vol. 2:605 ("this country's position reasserted, her vital interests secured"); 2nd ser., vol. 3:50 ("honour and safety of the country,"); 2nd ser., vol. 3:126-127 ("honour, dignity and safety of the Indian Empire [of her great Indian Empire]"); 2nd ser., vol. 3:464 ("lasting danger and disgrace to this country"). For Victoria's Prime Ministers and Foreign Secretaries, see LQV: Letter from Viscount Palmerston, 1st ser., vol. 1:203 ("honour of your Majesty's Crown and interests of your Majesty's dominions"), 2nd ser., vol. 1:140 ("promote the interests of his country and uphold the honour of your Majesty's Crown"); Letter from Lord Russell, 1st ser., vol. 1:327 ("honour or interests of the country"), 1st ser., vol. 3:472 ("English interest" and "English honour"); 2nd ser., vol. 1:158 ("interests and dignity of your Majesty and the country"); Letter from Edward Geoffrey, Lord Stanley (later 14th Earl of Derby), 1st ser., vol. 1: 552 ("highly honourable to your Majesty and advantageous to this country" and "glorious to British Arms, and so important to British interests"); Letter to Lord Clarendon 1st ser., vol. 3: 234 ("unwise and undignified"), 2nd ser., vol. 1:315 ("neither English honour nor English interests"); Letter from Lord Granville, 2nd ser., vol. 2:581 ("honour or interest of your Majesty").

87. See 176 PARL. DEB. (3d ser.) (1864) (Disraeli: "honourable and intelligible course," *id.* at 731, "honour of England and the peace of Europe," *id.* at 748, "honour or independence of England," *id.* at 750; Chancellor of the Exchequer Gladstone: "an object dearer to England than her interest—namely. . . her honour and duty," *id.* at 764, "dignity, independence and strength of her [i.e. Russia's] position," *id.* at 767-68, "our honour and interests," *id.*; former and future War Secretary Jonathan Peel: "peace and honour of the country," *id.* at 799-800; future Foreign Secretary Edward Henry, Lord Stanley (later 15th Earl of Derby): "influence, power, and honour of England" *id.* at 811, "a safe, respected, and honourable position," *id.* at 813).

88. See 65 PARL. DEB., H.C., (5th ser.) (1914) 1810, 1816-17, 1819-23, 1825 (Grey); Aug. 6, 1914: 2074, 2077, 2079-80, 2083 (Asquith).

89. See generally ARNO J. MAYER, *THE PERSISTENCE OF THE OLD REGIME: EUROPE TO THE GREAT WAR* (Pantheon Books 1981). The economic aspects of Mayer's thesis were rejected by LIEVEN. See *ARISTOCRACY IN EUROPE*, *supra* note 11, at 243-244; see also FUKUYAMA, *supra* note 5, at 265.

90. See KEVIN MCALEER, *DUELING: THE CULT OF HONOR IN FIN-DE-SIÈCLE GERMANY 197-99*, 203-04 (Princeton Univ. Press 1994); Gay, *supra* note 16, at 15, 17, 33, 113.

for preparing young males for self-control, sacrifice, defence and aggression.⁹¹ "The mid-Victorian cult of retrenchment, economy, rationality and utilitarianism" had by the 1890's fully given way to an exaggerated love of pomp and show, including the invention of "traditional" ceremonies.⁹² Were these early 20th century societies seeking to popularize king and country by systematically cultivating an "archaic ethos of heroism, glory and honour"?⁹³

Individual battlefield bravery could still be credibly characterized as glorious, honourable, and courageous, until heroism became largely irrelevant amidst the horrific mechanization of 1914-18 trench warfare—including barbed wire, machine guns, artillery barrages, poison gas, and tanks.⁹⁴ By contrast, U.S. foreign relations scholar George F. Kennan referred to the halcyon pre-war decades which still cherished "the romantic-chivalric concept of military conflict: the notion that whether you won or lost depended only on your bravery, your determination, your sense of righteousness, and your skill." He said warfare was viewed as "a test of young manhood, a demonstration of courage and virility, a proving-ground for virtue, for love of country, for national quality."⁹⁵ This dovetails with the 1880 view of Chief of the Great German General Staff, Count Helmuth von Moltke (1800-1891):

Perpetual peace is a dream, and not even a beautiful dream. War is an element of the world order established by God. In war develop mankind's most noble virtues: courage and self-denial, loyalty to duty and the spirit of sacrifice—the soldier gives his life. Without war, the world would stagnate and lose itself in materialism.⁹⁶

Similarly, Queen Victoria rhapsodized: "To die for one's country and Sovereign in the discharge of duty is a worthy and noble end to this earthly life for a soldier."⁹⁷

91. See PAUL FUSSELL, *THE GREAT WAR AND MODERN MEMORY* 21-23 (Oxford Univ. Press 1975). For Lord Curzon's "elaborate, Latinate style of rhetoric," see DAVID CANNADINE, *ASPECTS OF ARISTOCRACY: GRANDEUR AND DECLINE IN MODERN BRITAIN* 81-82 (New Haven-London, 1994).

92. See CANNADINE, *supra* note 91, at 89-92.

93. See MAYER, *supra* note 89, at 91; for Germany see, RÖHL, *supra* note 50, at 104; for Russia see, GEORGE F. KENNAN, *THE DECLINE OF BISMARCK'S EUROPEAN ORDER: FRANCO-RUSSIAN RELATIONS 1875-1890* 417-19 (Princeton Univ. Press 1979); Eric J. Hobsbawm, *Mass Producing Traditions: Europe, 1870-1914*, in *THE INVENTION OF TRADITION* 263-307 at 281-83 (Eric J. Hobsbawm & Terence Ranger eds., Cambridge Univ. Press 1983).

94. See FUSSELL, *supra* note 91, at 21; GIROUARD, *supra* note 50, at 290; cinematographic expressions include Lewis Milestone, *All Quiet on the Western Front* (Universal Studios 1930); Stanley Kubrick, *Paths of Glory* (MGM/UA Studios 1957); Peter Weir, *Gallipoli* (Paramount Studios 1981).

95. KENNAN, *supra* note 93, at 423-424.

96. Berlin, Dec. 11, 1880, *Les lois de la guerre sur terre: Lettres de M. le comte de Moltke et de M. Bluntschli*, in *REVUE DE DROIT INTERNATIONAL ET DE LÉGISLATION COMPARÉE*, TOME XIII 80 (1881); for "war as culture," see MODRIS EKSTEINS, *rites of Spring: The Great War and the Birth of the Modern Age* 90-94 (London-New York, 1989).

97. See Letter to India Viceroy, Lord Lytton, Dec. 6, 1878, 2 LQV 651 (2nd ser.).

H. War as Duel: Did Countries Fight for Honour?

In Europe, honour continued to hold an astonishingly strong grip on individual imagination and conduct, as evidenced by persistence into the 20th century of duelling—an élite practice sustained by several honour-related ideas, including the premium on readiness to risk life in a rite affirming masculinity, courage and character.⁹⁸ An early juridical treatment of the well-known link between honour and duelling is afforded by Bologna University's Giovanni da Legnano who argued (1360) that duels are fought for one or more of three reasons—hatred, an accusation's compurgation, or glory (*propter gloriam*). In the last case, the duellist seeks the joy of victory, i.e. "to win public glory by the strength of the body" and "from the disgrace of his fellow and neighbour."⁹⁹ This assessment was confirmed by Francis Bacon (1561-1626) who was a scientist, philosopher, Gray's Inn barrister, and ultimately Lord Chancellor of England: "Honour that is gained and broken upon another hath the quickest reflexion, like diamonds cut with facets."¹⁰⁰ His perception is particularly relevant because, turning to the international realm, Bacon specifically understood war as trial by combat.¹⁰¹

The same metaphor caused Italian philosopher of law and cultural history, Giambattista Vico (1668-1744) to observe that the moral theologians' understanding of war's external justice was based on the custom of duelling observed by individuals in their private affairs. Through the fortune of arms, divine providence was said to legitimate the victor's conquests.¹⁰² Similarly, Clausewitz began his classic study *On War* by defining conflict between States as "nothing but a duel on an extensive scale."¹⁰³

Travers Twiss (1809-1897) was Professor of International Law at King's College, London. Using *purum piumque duellum* (unstained and upright duel) for war as international law's ultimate sanction, he insisted that the metaphor was "not a fiction of Jurists, but a stern reality of International Life" as "the ruins of

98. See VICTOR GORDON KIERMAN, *THE DUEL IN EUROPEAN HISTORY: HONOUR AND THE REIGN OF ARISTOCRACY* (Oxford Univ. Press 1988); ROBERT A. NYE, *MASCULINITY AND MALE CODES OF HONOR IN MODERN FRANCE* (Oxford Univ. Press 1993); MCALEER, *supra* note 90; ARISTOCRACY IN EUROPE, *supra* note 11 at 195, 199; RUSSIA, *supra* note 11 at 86; ISTVÁN DEÁK, *BEYOND NATIONALISM: A SOCIAL AND POLITICAL HISTORY OF THE HABSBERG OFFICER CORPS, 1848-1918* 126-38 (Oxford Univ. Press 1992).

99. GIOVANNI DA LEGNANO, *TRACTATUS DE BELLO, DE REPRESALIIS ET DE DUELLO* §§ 169-174:331-341, at 332, 337 (Thomas Erskine Holland ed. and J.L. Brierly trans., Oxford 1917).

100. *Essays or Counsels, Civil and Moral, § 55: Of Honour and Reputation*, in 1 *THE WORKS OF FRANCIS BACON, BARON OF VERULAM, VISCOUNT ST. ALBAN AND LORD HIGH CHANCELLOR OF ENGLAND* 505-06 (James Spedding et al. eds., London 1858-1874).

101. See *Certain Observations Made Upon a Libel Published This Present Year, 1592*, in 8 *WORKS OF FRANCIS BACON* 146; for a late reference to wars as "suits of appeal to the tribunal of God's justice," see *Considerations Touching a War with Spain, 1624*, in 14 *WORKS OF FRANCIS BACON* 470.

102. See IV *THE NEW SCIENCE OF GIAMBATTISTA VICO* ch. 2, § 964, 356 (Thomas Goddard Bergin & Max Harold Fisch trans., Ithaca-London 1968).

103. CLAUSEWITZ, *supra* note 12, at bk. I, ch. 1, § 2:101.

Sebastopol bear convincing testimony."¹⁰⁴ The duel was also the metaphor for Edward Creasy (1812-1878) who was a Lincoln's Inn barrister, judge and historian. He asserted a country's "right to repel and to exact redress for injuries to its honour" as a "right of self-preservation," because "among nations, as among individuals, those who tamely submit to insult, will be sure to have insults and outrages heaped upon them."¹⁰⁵

French prelate and writer François Fénelon (1651-1715) was a bitter critic of France's foreign policy. He pointed to Louis XIV's desire for glory as one of the two causes of the Dutch War (1672-1678) said to have triggered a chain of conflicts impoverishing France.¹⁰⁶ Even a shrewd *Realpolitiker* like Frederick the Great believed that some wars were fought for glory, reputation and honour. Frederick said seeking glory was partly his motive for beginning (1740) the War of the Austrian Succession and that of the Habsburg Emperor Joseph II for the 1778 War of the Bavarian Succession.¹⁰⁷ Experience taught Frederick that respect accorded by fellow rulers was proportional to success on the battlefield.¹⁰⁸ He classified countries as primarily seeking either "glory" or "wealth." He said States preferring glory tended towards France, but those preferring wealth towards England. Differentiating interest from glory, he judged that for France to fight for the Rhine frontier was a matter of genuine interest, but for France to fight to be Europe's arbiter sheer vanity.¹⁰⁹

Avenging insults and defending England's honour was demanded by the "hard-hating, elegant polemicist" Junius who derided King George III for failing to fight Spain to enforce Britain's claim to the Falkland Islands:

To depart, in the minutest article, from the nicety and strictness of punctilio, is as dangerous to national honour, as it is to female virtue. The woman who admits of one familiarity, seldom knows where to stop, or

104. SIR TRAVERS TWISS, *THE LAW OF NATIONS CONSIDERED AS INDEPENDENT POLITICAL COMMUNITIES: ON THE RIGHT AND DUTIES OF NATIONS IN TIME OF PEACE* vi, ix (Oxford 1861).

105. SIR EDWARD SHEPARD CREASY, *FIRST PLATFORM OF INTERNATIONAL LAW* 153 (London 1876).

106. Letter to Louis XIV, in 7 *OEUVRES COMPLETES DE FENELON, ARCHEVEQUE DE CAMBRAI* 510 (Paris, 1850). This "anonymous letter" circulated from around Dec. 1693 and then went to the King's mistress, Françoise de Maintenon. See JEAN-CHRISTIAN PETITFILS, *LOUIS XIV 536-539* (Paris, 1995). Saying *gloire* was one of the main "values behind decision making" does not mean that policy was not also aimed at enhancing France's security. See John A. Lynn, *A Quest for Glory: The Formation of Strategy under Louis XIV*, in *THE MAKING OF STRATEGY: RULERS, STATES AND WAR 178-204* (Williamson Murray et al. eds., Cambridge 1994); Ragnhild M. Hatton, *Louis XIV and his Fellow Monarchs*, in *LOUIS XIV AND EUROPE 16-59* (Hatton ed. London 1976); JOHN B. WOLF, *LOUIS XIV 214* (New York 1968); ARON, *supra* note 10, at 74.

107. See *MEMOIRES DE FREDERIC II*, *supra* note 37, at 1 *Histoire de mon temps 75-77; Mémoires de 1775 à 1778*, in vol. 2: 443; *Mémoires de la guerre de 1778*, in vol. 2:469.

108. *Id.* at 1 *Histoire de la guerre de sept ans* 450.

109. See FRIEDRICH MEINECKE, *MACHIAVELLIANISM: THE DOCTRINE OF RAISON D'ÉTAT AND ITS PLACE IN MODERN HISTORY* 316 (Douglas Scott trans., London 1957); SIR HAROLD NICOLSON, *GOOD BEHAVIOUR: A STUDY OF CERTAIN TYPES OF CIVILITY* 107 (London 1955) ("The idea of glory for glory's sake never pushed deep roots into the thick soil of the English character. Yet in France such words as *'gloire'* and *'panache'* possess even today a certain sentimental value.").

what to refuse; and when the counsels of a great country give way in a single instance, when they are once inclined to submission, every step accelerates the rapidity of their descent.¹¹⁰

Otherwise pacific, Charles James Fox likewise believed: "Among individuals, and much more among nations, honour is the most essential means of safety, as it is the first, and I had almost said the only legitimate ground of war."¹¹¹

Showing Napoleon III and William I with foils, *Punch* portrayed the "point of honour" and the duel as the metaphor for the war which France began against Prussia in July 1870.¹¹² Prussia's Chancellor Otto von Bismarck took lifelong pride in having won twenty-five student duels.¹¹³ This fact must be recalled in connection with the famous Ems telegram which he edited so as to produce the abrupt tone which was—according to the then prevailing code of honour (*Ritterkodex*)—tantamount to declaring war.¹¹⁴ With precisely this in mind, Britain's Foreign Secretary Lord Granville said it was "inconceivable that, in the present state of civilisation, hundreds of thousands of Frenchmen should be hurled against like numbers of Germans, on a point limited to a matter of etiquette."¹¹⁵ Also with reference to the Franco-Prussian War, Granville said: "It is sometimes useful to compare the action of nations and that of individuals, and very often the conduct of a high-spirited nation and of an honourable man is very much the same."¹¹⁶ This discourse of honour was continued by the German Crown Prince Frederick: "It would surely be no shame to France that has fought bravely, to confess at last that she has been beaten by an Army equal to hers. No one would accuse France of cowardice, or believe that her military honour had not had justice done to it."¹¹⁷

The duel metaphor was also used by Prime Minister Disraeli to portray Foreign Secretary Granville's conduct at the 1870-71 London Conference revising the 1856 Paris Treaty's Black Sea clauses:

Why, the noble Lord went there to vindicate the honour and the interests of his country; and if the Russian Ambassador had refused the compensation which he demanded it would have been the noble Lord's duty to coerce the Power which had first outraged England, and then refused to do the only act which the noble

110. Letter to the Printer of the *Public Advertiser*, Jan. 30, 1771, No. 42, see 2 THE LETTERS OF JUNIUS 48, *supra* note 53; characterized by AYLING, *supra* note 53, at 164.

111. Nov. 3, 1801, Commons, 36 PARLIAMENTARY HISTORY OF ENGLAND 72.

112. See *A Duel to the Death*, in 59 *Punch* 37 (Jul. 23, 1870) (France to Britannia: "Pray stand back, Madam. You mean well; but this is an old family quarrel, and we must *fight it out!*").

113. See GAY, *supra* note 16, at 258.

114. See GOLO MANN, DEUTSCHE GESCHICHTE DES 19. UND 20. JAHRHUNDERTS 379 (Frankfurt am Main 1958); KOPPEL S. PINSON, MODERN GERMANY: ITS HISTORY AND CIVILIZATION 144-46, and 589 n.31 (New York 1955).

115. Letter from Granville to Queen Victoria, Jul. 15, 1870, 2 LQV 35 (2nd ser.).

116. 203 PARL. DEB. (3d ser.) (1870) 1754.

117. German Crown Prince to Queen Victoria, Jan. 3, 1871, 2 LQV 101-02 (2nd ser.).

Lord could devise in order to remove that stain on her reputation.¹¹⁸

In the Annual Message to Congress (1905), President Theodore Roosevelt proved that honour's rhetoric was not limited to Europe: "This mighty and free Republic should ever deal with all other States, great or small, on a basis of high honor, respecting their rights as generously as it safeguards its own." He believed that "if war is necessary and righteous then either the man or the nation shrinking from it forfeits all title to self-respect."¹¹⁹ A year later, he told Congress that "honorable men" and an "honorable nation" must choose to fight rather than buy peace through "sacrifice of conscientious conviction or of national welfare." He said "a beaten nation is not necessarily a disgraced nation; but the nation or man is disgraced if the obligation to defend right is shirked."¹²⁰ Referring to the 1898 Spanish-American War, Roosevelt in 1917 reflected: "I believe that war should never be resorted to when or so long as it is honorably possible to avoid it. I advocate preparation for war in order to avert war, and I should never advocate war unless it were the only alternative to dishonor."¹²¹

"Nations and States can achieve no loftier consummation than to stake their whole power on upholding their independence, their honour, and their reputation."¹²² With these words, German soldier, historian and diplomat Friedrich von Bernhardi (1849-1930) argued that the State has both the right and the duty to make war: "If sometimes between individuals the duel alone meets the sense of justice, how much more impossible must a universal international law be in the wide-reaching and complicated relations between nations and States!" He insisted that: "Even if a comprehensive international code were drawn up, no self-respecting nation would sacrifice its own conception of right to it. By so doing it would renounce its highest ideals; it would allow its own sense of justice to be violated by an injustice, and thus dishonour itself."¹²³ Recalling Frederick the Great, Bernhardi argued: "Cases may occur where war must be made simply as a point of honour, although there is no prospect of success."¹²⁴

118. 232 PARL. DEB. (3d ser.) (1877) 725; Arts. 11 and 13, General Treaty for the Re-establishment of Peace between Austria, France, Great Britain, Prussia, Sardinia and Turkey, and Russia, Mar. 30, 1856, in 114 CTS 414-15.

119. 5th Annual Message to Congress, Dec. 5, 1905, see A COMPILATION OF THE MESSAGES AND PAPERS OF THE PRESIDENTS 1789-1908 1150, 1152 (James D. Richardson ed., vol. 11, Bureau of National Literature 1908) [hereinafter Messages and Paper]; SIR NORMAN ANGELL, THE GREAT ILLUSION: A STUDY OF THE RELATION OF MILITARY POWER IN NATIONS TO THEIR ECONOMIC AND SOCIAL ADVANTAGE 139 (3d. ed., Toronto 1911) (quoting President Roosevelt at Stationers' Hall, London, stating "We despise a nation just as we despise a man who submits to insult. What is true of a man ought to be true of a nation.").

120. 6th Annual Message to Congress, Dec. 3, 1906, see 11 MESSAGES AND PAPERS 1181-1228, 1223-24, *supra* note 119.

121. THEODORE ROOSEVELT, NATIONAL STRENGTH AND INTERNATIONAL DUTY 15 (Princeton 1917).

122. FRIEDRICH VON BERNHARDI, GERMANY AND THE NEXT WAR 21 (Allen H. Powles trans., London 1913).

123. BERNHARDI, *supra* note 122, at 25.

124. *Id.* at 46-47.

Seeing the word *honneur* in the French text of the Preamble to the League of Nations Covenant, Oxford University Professor of International Relations Alfred Eckhard Zimmern (1879-1957) reflected: "*Honneur* suggests not 'fair play', with its spacious tolerance and comfortable associations with the world of sport, but the rigorous punctilio of the tournament and the duel."¹²⁵ Indeed, European foreign policy before 1914 was frequently formulated and executed by individuals who dueled or subscribed to the cult of dueling.¹²⁶ According to Edinburgh University History Professor Victor Kiernan: "Just as the duelist claimed exemption in his chosen sphere from ordinary law, monarchs . . . and almost equally the small cliques in control of foreign policy . . . set their 'honour' above the common welfare of mankind." Statesmen and duellists shared an obsession with peer standing that caused Kiernan to comment: "None of the diplomats and generals of 1914 could risk appearing the first to give way, any more than duellists could resist the pressure of social opinion."¹²⁷ It is difficult to escape the conclusion that, before 1914, the State was personified as a nobleman with a sense of honour, and that foreign relations were seen through the prism of the cult of honour accepted among gentlemen.

I. Was Honour a Cause of the First World War?

Looking at power structures, German sociologist Max Weber (1864-1920) pointed to prestige as a factor influencing foreign policy: "Prestige of power, as such, means in practice the glory of power over other communities; it means expansion of power, though not always by way of incorporation or subjection." He saw the Great Powers as large, status-seeking political communities naturally challenging all other possible prestige bearers. On the eve of the First World War, Weber wrote:

Experience teaches that claims to prestige have always played into the origins of wars. Their part is difficult to gauge; it cannot be determined in general, but it is very obvious. The realm of 'honor' which is comparable to the 'status order' within a political structure, pertains also to the interrelations of political structures.¹²⁸

Rejecting economic determinism, Fukuyama relies on interpretations of German philosopher Georg Wilhelm Friedrich Hegel (1770-1831) for the proposition that the "motor of history" is man's desire for recognition, which along with "the accompanying emotions of anger, shame, and pride, are parts of the human personality critical to political life." Fukuyama's explanation of the development of international politics points to what amounts to honour:

125. ALFRED ECKHARD ZIMMERN, *THE LEAGUE OF NATIONS AND THE RULE OF LAW 1918-1935* 277 (2d. ed. London 1939).

126. See GAY, *supra* note 16 at 258; MCALEER, *supra* note 90 at 34-35.

127. KIERNAN, *supra* note 98 at 316-17.

128. FROM MAX WEBER: *ESSAYS IN SOCIOLOGY* 159-161 (Hans H. Gerth & C. Wright Mills trans. & ed., New York, 1958).

The desire for recognition that led to the original bloody battle for prestige between two individual combatants leads logically to imperialism and world empire. The relationship of lordship and bondage on a domestic level is naturally replicated on the level of states, where nations as a whole seek recognition and enter into bloody battles for supremacy.¹²⁹

Fukuyama sees the 1914-18 war as a battle for pure prestige. He invokes Platonic *thymos*—the soul's spirited element offering courage, fierceness, and indignation tied to a sense of honour—to dub the war, a classic thymotic struggle.¹³⁰ Joining historians pointing to the mass exhilaration that greeted the war's outbreak, Fukuyama diagnoses an honour-related syndrome, a *megalothymia* (exuberance) of nations seeking "recognition of their worth and dignity" and of individuals rebelling against the *isothymia* (boredom) of everyday life.¹³¹ His focus on *thymos* coincides with the many references to honour in August 1914.¹³² This approach is particularly pertinent to the prestige orientation of both Austria-Hungary and Russia, the States most *directly* responsible for the catastrophe.

"You see in me the last monarch of the old school," said eighty-year-old Habsburg Emperor Francis Joseph to former U.S. President Roosevelt.¹³³ Indeed, honour and duty were central themes in Francis Joseph's increasingly fatalistic understanding of statecraft.¹³⁴

The honour of the Monarchy [i.e. Austria-Hungary] still held pride of place in Franz Joseph's *Weltanschauung*. And in a sense his policy was the same after 1866 [Austria's defeat by Prussia] as before—to defend his position as long as possible, to do his duty, and if that failed, to go down with honour. But it was nevertheless for the emperor to judge when the honour of the Monarchy was being openly challenged. After 1866 he was

129. FUKUYAMA, *supra* note 5 at xvii, xx, 143-152; "poverty with prestige is better than affluent with disgrace," see HOWARD K. BLOOM, *THE LUCIFER PRINCIPLE: A SCIENTIFIC EXPEDITION INTO THE FORCES OF HISTORY* 250-257 (New York 1995).

130. See FUKUYAMA, *supra* note 5, at xvi-xvii; *THE REPUBLIC OF PLATO* 63 (Francis MacDonald Cornford, ed., Oxford 1941): "This term [*thymos*] covers a group of impulses manifested in anger and pugnacity, in generous indignation allied to a sense of honour and in competitive ambition. Its virtue is courage."

131. See FUKUYAMA, *supra* note 5, at 331-332; GAY, *supra* note 16, at 514-17; EKSTEINS, *supra* note 96, at 55-64; ORLANDO FIGES, *A PEOPLE'S TRAGEDY: THE RUSSIAN REVOLUTION 1891-1924* 250-51 (London 1996); JAMES BYSSIE JOLL, *EUROPE SINCE 1870: AN INTERNATIONAL HISTORY* 193-195 (2d. ed. Harmondsworth 1976).

132. See BARBARA W. TUCHMAN, *THE GUNS OF AUGUST* 103, 117-18, 124, 132, 138, 140-41 (New York 1963).

133. Friedrich Engel-Janosi, *Der Monarch und seine Ratgeber*, in *PROBLEME DER FRANZISKO-JOSEPHINISCHEN ZEIT 1848-1916* 9-24, at 9 (Friedrich Engel-Janosi & Helmuth Rumpler eds., Vienna 1967).

134. *Id.*; Hugo Hantsch, *Kaiser Franz Joseph und die Außenpolitik*, in *PROBLEME DER FRANZISKO-JOSEPHINISCHEN ZEIT* 25-39; HEINRICH BENEDIKT, *DIE MONARCHIE DES HAUSES ÖSTERREICH: EIN HISTORISCHES ESSAY* 124, 226, 229 (Vienna 1968); ADAM WANDRUSZKA, *THE HOUSE OF HABSURG 147-54* (Cathleen & Hans Epstein trans., New York 1964); *I BRIEFE KAISER FRANZ JOSEPHS AN KAISERIN ELISABETH 1859-1898* 28, 32 (Georg Nostitz-Rieneck ed., Vienna 1966).

simply more long-suffering and more reluctant to go to war than in his earlier years. It was not until 1914 that he despaired of maintaining the honour of the Monarchy by diplomatic means.¹³⁵

After Serbian nationalist Gavrilo Princip killed the Habsburg heir apparent, retaliation was endorsed by Francis Joseph who knew that resort to arms would probably trigger a European war that might destroy Austria-Hungary.¹³⁶ His *ancien régime* logic he explained to General Staff Chief Conrad von Hötzendorf: "If the Monarchy is already doomed, at least it ought to go down honourably (*anständig*)."¹³⁷ The Sarajevo assassination caused Conrad to write in the same vein: "It will be a hopeless struggle, but nevertheless it must be, because such an ancient monarchy and such an ancient army cannot perish ingloriously."¹³⁸ After Francis Joseph declared war on Serbia, he asked his peoples to make "sacrifices for the honour, the majesty, the power of the Fatherland." Justifying recourse to force, he explained: "The machinations of a hostile power, moved by hatred, compel me after many long years of peace to take up the sword to preserve the honour of my Monarchy. . . ."¹³⁹ Similarly, German Emperor William II called on his people to "stand, in resolute fidelity, by our ally," Austria-Hungary "which is battling for its reputation as a great power, and with whose humiliation our power and honor, too, would be lost."¹⁴⁰

Prestige was also crucial to Russia, trying to regain standing among the Great Powers after humiliating defeats in the 1904-05 Russo-Japanese War and the 1908-09 Bosnian annexation crisis. "We will not let ourselves be trampled upon," said Russian Emperor Nicholas II in January 1914 to French Ambassador Théophile Delcassé.¹⁴¹ Upholding national honour drove Russia to support Serbia said British historian Dominic Lieven:

To understand why Russia went to war in 1914 it is. . . necessary to grasp the

135. F.R. BRIDGE, *FROM SADOWA TO SARAJEVO: THE FOREIGN POLICY OF AUSTRIA-HUNGARY, 1866-1914* 12 (London 1972).

136. See GEORGE R. MAREK, *THE EAGLES DIE: FRANZ JOSEPH, ELISABETH AND THEIR AUSTRIA* 441-42, 454-55 (New York 1974). Told Germany would be true even if Austria-Hungary's planned attack on Serbia triggered "the big war" with France and Russia, Francis Joseph said "Now we can no longer turn back. It will be a terrible war." See LUIGI ALBERTINI, *2 THE ORIGINS OF THE WAR OF 1914* 142 (Isabella M. Massey trans., London 1953).

137. VIKTOR BIBL, *2 DER ZERFALL ÖSTERREICHS: VON REVOLUTION ZU REVOLUTION* 498-99 (Vienna 1924); Francis Joseph repeated remarks circling around the words "to do one's duty and—if it must be—to go down with honour [*Ehre*], see ENGEL-JANOSI, *supra* note 133, at 22; DEÁK, *supra* note 98, at 75 ("The final responsibility for what happened. . . lay with Francis Joseph, who. . . sensing that the monarchy was doomed, nevertheless consented to the issuing of an unacceptable ultimatum. He signed the fatal mobilization order so as to preserve the dignity of the house.").

138. Jun. 28, 1914, see GUNTHER E. ROTHENBERG, *THE ARMY OF FRANCIS JOSEPH* 177 (West Lafayette, Indiana 1976).

139. *Wiener Zeitung*, Jul. 29, 1914, see EDWARD CRANKSHAW, *THE FALL OF THE HOUSE OF HABSURG* 404 (New York 1963).

140. Appeal to the German People, Aug. 6, 1914, see GAY, *supra* note 16 at 515.

141. See FIGES, *supra* note 131 at 249.

values and mentality of the Russian ruling élites, including Nicholas II. In old regime Europe the nobleman was brought up to defend his public reputation and honour at all costs, if necessary with sword in hand. The ethic of the duel still prevailed in aristocratic and, in particular, military circles. No crime was worse than cowardice. Kings, aristocrats and generals were not used to being pushed about or humiliated. In contemporary parlance, they had a short fuse.

On war's outbreak, Nicholas II proclaimed that it was imperative "to protect the honour, dignity and safety of Russia and its position among the Great Powers."¹⁴²

Honour was also targeted by its critics. For example, Norman Angell (1874-1967) wrote (1910) *The Great Illusion*—an anti-war best seller deriding the idea of national honour and deploring the survival of the *code duello*, then "maintained as vigorously as ever in the relations of States."¹⁴³ This critical current flowed in Parliament on the eve of Britain's entry into the First World War. Labour Party Leader James Ramsay Macdonald argued:

There has been no crime [i.e. going to war] committed by statesmen of this character without those statesmen appealing to their nation's honour. We fought the Crimean War because of our honour. We rushed to South Africa because of our honour. The right hon. Gentleman [Foreign Secretary Sir Edward Grey] is appealing to us today because of our honour.¹⁴⁴

Exactly this view was echoed by Independent Labour Party Chairman James Keir Hardie.¹⁴⁵ Similarly, Liberal MP Sir William Byles said:

It is not a war to defend our hearths and homes. If it were I could understand this exultation. It is to defend our honour. . . . It is for honour that a German duellist fights his fellow officer. Whether he kills his opponent or is killed by him, honour is revenged. So it is to be now. We are to hire a number of men, a number of soldiers, to go and blow out the brains of another number of men, to vindicate our honour.¹⁴⁶

For Liberal MP John Annan Bryce, going to war was "a regular house that Jack built" because "we have the French joining the Russians on a point of honour and we are joining the French on a point of honour."¹⁴⁷

142. RUSSIA, *supra* note 11, at 5, 7, 20-22, 65-68, 72, 86, 95-96, 100, 108, 111, 114-16, 123, 128, 131-33; *see also* DOMINIC LIEVEN, *NICHOLAS II: TWILIGHT OF THE EMPIRE* 174, 190, 200-01 (New York 1993).

143. ANGELL, *supra* note 119, at 175-79.

144. 65 PARL. DEB., H.C. (5th ser.) (1914) 1830.

145. *See id.* at 1841.

146. *Id.* at 1873.

147. 65 PARL. DEB., H.C. (5th ser.) (1914) at 1876.

J. Did Honour Require Britain to Fight in 1914?

Prime Minister Asquith told Parliament that Belgium had refused Germany's August 2nd demand for "free passage through Belgian territory" as a "flagrant violation of the law of nations,"¹⁴⁸ a phrase pointing to infringement of Belgian sovereignty as a contravention of customary international law. This interpretation coincided with German Chancellor Theobald von Bethmann Hollweg's astonishing Reichstag admission that Germany's August 4th march into Belgium was an *Unrecht* (wrong, tort, delinquency) which "violates the precepts of international law."¹⁴⁹ Treaty obligation aside, this customary law contravention was—according to international law as it was in 1914—merely matter for a bilateral dispute between Belgium and Germany. As for Britain's becoming a party to the dispute, her *locus standi* arose from the invasion's being simultaneously a violation of the neutrality guaranteed by the 1839 London agreements to which Britain was party.¹⁵⁰ The fact that Britain's *casus belli* was breach of treaty understandably provoked discussion about the nature of treaty obligation which was consistently portrayed not as a matter of law, but of honour.¹⁵¹

The consensus was that treaty obligation arose from a "good faith" promise, of which fulfilment was a matter of national honour, abandonment a national disgrace. A distinguished barrister, Asquith justified going to war to uphold the 1839 treaties:

If I am asked what we are fighting for I reply in two sentences. In the first place, to fulfil a solemn international obligation, an obligation which, if it had been entered into between private persons in the ordinary concerns of life, would have been regarded as an obligation not only of law but of honour, which no self-respecting man could possibly have repudiated. I say, secondly, we are fighting to vindicate the principle. . .

148. *Id.* at 1926.

149. Aug. 4, 1914, *see* MANN, *supra* note 114, at 577 ("Unsere Truppen haben Luxemburg besetzt, und vielleicht schon belgisches Gebiet. Das widerspricht den Geboten des Völkerrechts . . . Das Unrecht, das wir damit tun, werden wir wieder gutmachen, sobald unseres militärisches Ziel erreicht ist.").

150. Austria, France, Great Britain, Prussia and Russia guaranteed Belgium's neutrality in two 1839 treaties with the Netherlands and Belgium respectively, *see* 88 CTS 411-26; for 1870 and 1908 legal opinions, *see* 8 BRITISH DOCUMENTS ON THE ORIGINS OF THE WAR 1898-1914 371-79 (G. P. Gooch & Harold Temperley eds., London, 1932).

151. The 1870 neutrality precedent and pacifism in the Liberal Party caused Cabinet to disagree over aiding France, but the German invasion of Belgium tipped the scales, *see* PHILLIPSON, *supra* note 70, at 7-26; Keith M. Wilson, *The Cabinet's Decision for War, 1914*, in POLICY OF THE ENTENTE: ESSAYS ON THE DETERMINANTS OF BRITISH FOREIGN POLICY 1904-1914 135-147 (Keith M. Wilson ed., Cambridge 1985); TREVOR WILSON, THE MYRIAD FACES: BRITAIN AND THE GREAT WAR 28-35 (Oxford 1986); MICHAEL G. FRY, LLOYD GEORGE AND FOREIGN POLICY: THE EDUCATION OF A STATESMAN, 1890-1916 183-213 (Montreal-London 1977); Britain would likely have opted for neutrality and France for an early peace, had Germany held back in the West and attacked Russia instead. *See* A.J.P. TAYLOR, THE STRUGGLE FOR MASTERY IN EUROPE: 1848-1918 549 n.1 (Oxford 1954).

that small nationalities are not to be crushed, in defiance of international good faith [i.e. *pacta sunt servanda*], by the arbitrary will of a strong and overmastering Power.¹⁵²

Asquith characterized as “infamous,” “betrayal” and “dishonour of our obligations” the proposal that Britain acquiesce in Germany’s march through Belgium.¹⁵³

Foreign Secretary Sir Edward Grey had studied law at Oxford University. He recalled the government’s commitment that there would be “no secret engagement” foisting “an obligation of honour upon the country.”¹⁵⁴ A clear picture of treaty obligation emerges from his description of the Franco-Russian alliance:

I can say this with the most absolute confidence—no Government and no country has less desire to be involved in war over a dispute between Austria and Serbia than the Government and country of France. They are involved in it because of their obligation of honour under a definite alliance with Russia. Well, it is only fair to say to the House that that obligation of honour cannot apply in the same way to us. We are not parties to the Franco-Russian Alliance. We do not even know the terms of that Alliance. So far I have, I think, faithfully and completely cleared the ground with regard to the question of obligation.¹⁵⁵

Although the 1839 London Treaties guarantying Belgium’s neutrality were the crux of debate, a “legal” obligation to help Belgium was not mentioned. Rather the issue was whether the treaties had engaged Britain’s honour—posing the terrible sanction of dishonour. Grey said: “If in a crisis like this, we run away from those obligations of honour and interest as regards the Belgian Treaty . . . we should, I believe, sacrifice our respect and good name and reputation before the world.”¹⁵⁶ This reasoning was supported by Conservative Opposition Leader Andrew Bonar Law who spoke of “honour and security.”¹⁵⁷ However, Labour Party Leader Macdonald asked “whether the country is in danger.” Ignoring treaties, Macdonald said neutrality alone is “in the deepest parts of our hearts” consistent with the honour of the country and of the Liberal Party.¹⁵⁸

On August 4, Grey told U.S. Ambassador Page: “England would be forever contemptible if it should sit by and see this treaty violated. Its position would be gone if Germany were thus permitted to dominate Europe.”¹⁵⁹ Grey’s memoirs repeated the theme of dishonour: “The real reason for going into the war was that,

152. 65 PARL. DEB., H.C. (5th ser.) (1914) 2079.

153. *Id.* at 2076-77.

154. 65 PARL. DEB., H.C. (5th ser.) (1914) 1810.

155. *Id.* at 1814-15.

156. *Id.* at 1823-25.

157. *Id.* at 1828.

158. *Id.* at 1830-31.

159. 1 THE LIFE AND LETTERS OF WALTER H. PAGE 314 (Burton J. Hendrick, ed., Doubleday, Page & Co. 1922).

if we did not . . . stand up for Belgium against this aggression, we should be isolated, discredited, and hated; and there would be before us nothing but a miserable and ignoble future."¹⁶⁰

Similarly, Britain's Ambassador in Berlin pointed to honour to explain why England was willing to fight for the 1839 treaties:

In the same way, as he [Bethmann Hollweg] and [Foreign Minister] Herr [Gottlieb] von Jagow wished me to understand that for strategical reasons it was a matter of life and death to Germany to advance through Belgium and violate her neutrality, so I would wish him to understand that it was, so to speak, a matter of 'life and death' for the honour of Great Britain that she should keep her solemn engagement to do her utmost to defend Belgium's neutrality if attacked. That solemn compact simply had to be kept, or what confidence could anyone have in engagements given by Great Britain in the future?¹⁶¹

The link between treaty performance and honour was not just an élite perception, but widespread among that generation of Englishmen.¹⁶² London University Professor of French History, Alfred Cobban (1901-1968) said: "In 1914 there was still a general expectation that treaties would be kept until they were formally denounced. It is difficult to think back now to a time when the German disregard of Belgian neutrality was regarded as a shattering blow to normal conventions of international behaviour."¹⁶³ Poet Rupert Brooke (1887-1915) then thought Belgium "a thousand times enough" to fight for, and poet and writer Robert Graves (1895-1985) later recalled having been "outraged to read of the cynical violation of Belgian neutrality."¹⁶⁴ Streaming to the colours, recruits believed they were doing the right thing: "Few young English officers doubted that Germany had broken the code of European nations and deserved to be punished."¹⁶⁵ This violation of the 1839 treaties was condemned by British public opinion as a dishonourable breach of faith—a transgression helping religious denominations portray the Allied cause as a 20th century crusade.¹⁶⁶

160. VISCOUNT GREY OF FALLODON, 2 TWENTY-FIVE YEARS 1892-1916 15-16, 322-24 (The Ryerson Press 1925).

161. Letter from Sir Edward Goschen to Sir Edward Grey, Berlin, Nos. 667 and 671, Aug. 4 and 6, 1914, 9 BRITISH DOCUMENTS ON THE ORIGINS OF THE WAR 1898-1914 347, 352 (London 1926); THE DIARY OF EDWARD GOSCHEN 1900-1914 50 (Royal Historical Society, 25 Camden, 4th ser., Christopher H.D. Howard ed., London 1980).

162. See Michael Howard, *Europe on the Eve of the First World War*, in THE LESSONS OF HISTORY 119-20 (New Haven-London 1991).

163. ALFRED COBBAN, 3 A HISTORY OF MODERN FRANCE 106 (Baltimore 1965).

164. Sep. 24, 1914, THE LETTERS OF RUPERT BROOKE 618 (Geoffrey Keynes ed., London 1968); ROBERT GRAVES, GOODBYE TO ALL THAT: AN AUTOBIOGRAPHY 99 (London 1929).

165. ROBERT WOHL, THE GENERATION OF 1914 93 (Harvard Univ. Press 1979).

166. See Lillian M. Penson, *Obligations by Treaty: Their Place in British Foreign Policy, 1898-1914*, in STUDIES IN DIPLOMATIC HISTORY AND HISTORIOGRAPHY IN HONOUR OF G.P. GOOCH 87 (Arshag Ohan Sarkissian ed., London 1961); ALBERT MARRIN, THE LAST CRUSADE: THE CHURCH OF ENGLAND IN THE FIRST WORLD WAR 131-32, 221, 251 (Durham N.C., 1974); HUBERT GEBELE, DIE PROBLEME VOM KRIEG UND FRIEDEN IN GROßBRITANNIEN WÄHREND DES ERSTEN WELTKRIEGS:

K. Was "National Honour" Recognized by International Law?

Although our own *fin de siècle* finds appeals to honour pompous, affected and even ridiculous, pre-1914 juridical discourse abounds with sincere references to "honour" in speeches, diplomatic papers, private correspondence, books and treaties. Such language was not merely rhetorical because customary international law then recognized that a country had a "right to reputation," i.e. respect for its moral and juristic personality, including "the right to demand satisfaction for an offence against its honour."¹⁶⁷ Scottish advocate and Glasgow judge, James Reddie (1773-1852) included among a nation's general permanent attributes its "national honour" or "reputation" defined as:

the right of a nation to the maintenance of its honour, character, and reputation—a right which is so difficult to define in the abstract; but which, in the concrete, and in the particular case, is so easily understood and felt, and the maintenance of which is so conducive to the security and prosperity of a nation.¹⁶⁸

This "right to respect" was also described by Alphonse Pierre Octave Rivier (1835-1898) who was a Swiss diplomat and Professor of International Law at Brussels University: "The State's moral character, dignity, honour, credit, and good reputation are as much elements of its personality as its physical, economic and juridical condition. The State has the right to keep them intact against any slur."¹⁶⁹ Similarly, the British editor of the *Commentary* of U.S. jurist James Kent (1763-1847) identified as the primary objects of international law, "the independence of nations, the inviolability of their several territories, and the maintenance of their honour."¹⁷⁰ This kind of thinking helped 19th century States justify using force to defend their honour. For example, national dignity was offended by Venezuelan President de Castro's 1908 dismissal of Dutch Minister Resident de Reuss. In reprisal, Dutch cruisers captured two Venezuelan public ships which were held pending apology.¹⁷¹

Just as the aristocrat refused "to remit to the courts the settlement of his affairs of honour," so national honour was generally regarded as a matter of paramount concern beyond the bounds of arbitration.¹⁷² According to Argentine international lawyer, diplomat and historian Carlos Calvo (1824-1906):

REGIERUNG, PARTEIEN UND ÖFFENTLICHE MEINUNG IN DER AUSEINANDERSETZUNG ÜBER KRIEGS- UND FRIEDENSZIELE 46 (Frankfurt 1987).

167. JOHANN KASPAR BLUNTSCHLI, *EL DERECHO INTERNACIONAL CODIFICADO* bk. II, § 85 at 95 (José Diaz Covarrubias trans. Mexico City, 1871).

168. JAMES REDDIE, *INQUIRIES IN INTERNATIONAL LAW PUBLIC AND PRIVATE* 198 (2d. ed. Edinburgh 1851).

169. ALPHONSE RIVIER, *1 PRINCIPES DU DROIT DES GENS* 260 (Paris 1896).

170. See KENT, *COMMENTARY*, *supra* note 40, at 3.

171. See LASSA FRANCIS LAWRENCE OPPENHEIM, *2 INTERNATIONAL LAW* § 34 at 40 and § 37 at 43 (2d. ed. London 1912).

172. See *Honor and Social Status*, *supra* note 4, at 30-31; KIERNAN, *supra* note 98, at 316: "What the duel had been for gentlemen. . . war was now for rulers who were infecting their peoples with the belief that it would be shameful to surrender 'national honour' to international laws or courts."

“Arbitration can settle every species of difference except those in which honor and national dignity are directly in play and which arise from a personal sentiment which no third state can properly judge, each nation being the sole judge of its dignity and the rights which guarantee its safety.”¹⁷³ The International Law Association’s 1893 arbitration plan accordingly distinguished arbitrable disputes from those involving national honour and independence.¹⁷⁴ In 1896, British Prime Minister Lord Salisbury weighed the possibility of “establishing a system of international arbitration for the adjustment of disputes” with the United States. Sending to Washington the outline of a stillborn arbitration treaty, Salisbury noted: “Neither Government is willing to accept arbitration upon issues in which the national honour or integrity is involved.”¹⁷⁵ Hardly surprising, therefore, was the inclusion in the 1899 Hague Convention for the Pacific Settlement of International Disputes of a provision limiting fact-finding commissions to “disputes of an international character involving neither honour nor vital interests.”¹⁷⁶ Referring to the new Permanent Court of Arbitration at the Hague, Britain and France made (1903) an agreement excluding from compulsory arbitration, differences affecting “the vital interests, the independence, or the honour of the two Contracting States.”¹⁷⁷ Although the Anglo-French treaty was hardly the first to exclude disputes affecting national honour,¹⁷⁸ the tripartite exception—or variations thereof—was replicated in subsequent British and French treaties with other countries, and adopted by the United States and other States for many of the bilateral arbitration conventions signed before the First World War.¹⁷⁹

L. Was Dishonour International Law's Sanction?

Lincoln’s Inn barrister Mountague Bernard (1820-1882) was Professor of

173. CHARLES CALVO, 3 LE DROIT INTERNATIONAL § 1756 (5th ed., Paris 1896); See JACKSON H. RALSTON, INTERNATIONAL ARBITRATION FROM ATHENS TO LOCARNO § 21 at 32 (Palo Alto-London 1929).

174. See HINSLEY, *supra* note 81, at 138.

175. Doc. No. 12, Letter from Lord Salisbury to British Ambassador at Washington, Mar. 5, 1896, DOCUMENTS RELATING TO THE PROGRAM OF THE FIRST HAGUE PEACE CONFERENCE LAID BEFORE THE CONFERENCE BY THE NETHERLANDS GOVERNMENT 94 (Oxford 1921).

176. Art. 9, Convention for the Pacific Settlement of International Disputes, Jul. 29, 1899, *in* 187 CTS 415. The Article 9 “honour” exception originated with Russia, *see* 1 INSTRUCTIONS TO THE AMERICAN DELEGATES TO THE HAGUE PEACE CONFERENCES AND THEIR OFFICIAL REPORTS 306 (James Brown Scott ed. New York 1916) [hereinafter HAGUE PEACE CONFERENCES].

177. Art. 1, Agreement between France and Great Britain for the Settlement by Arbitration of Certain Classes of Questions which may arise between the two Governments, Oct. 14, 1903, *in* 194 CTS 194-95.

178. For example, disputes affecting “either the national honour or the national independence” are excluded by Article 1 of the Arbitration Treaty between Mexico and Spain, Jan. 11, 1902, *in* 190 CTS 334.

179. *Re* this self-judging “honour” clause, *see* 1 HAGUE PEACE CONFERENCES, *supra* note 176 at 78 and 329; HUDSON, INTERNATIONAL TRIBUNALS 7, 77; for the formula applied, *see* Article 1, Arbitration Convention between France and Italy, Dec. 25, 1903, *in* 194 CTS 365; and 206 CTS, Article 1 of U.S. treaties with Mexico (288-289), Italy (354), Britain (360), Norway (363-364), Portugal (368-369), and Spain (418-419).

International Law and Diplomacy at Oxford University. From the perspective of 19th century international law, he opined: "Honour—which in its higher sense means self-respect, in its lower sense respect for the opinion of a particular class—may and does help to supply, among nations as among individuals, the absence of those sanctions which wait upon municipal law."¹⁸⁰ Similarly, Yale University President Theodore Dwight Woolsey (1801-1889) included among international law's sanctions each State's "moral sentiment" as "a considerable and an increasing force. . . which comes into the recesses of palaces and cabinets; and which sometimes speaks in threatening tones against gross wrongs."¹⁸¹ He believed that a whole country's population could feel the sting of a national insult, and sense "the loss of a good name upon intercourse with other states, as well upon that self-respect which is an important element in national character. . . . Without such a value set on reputation, fear of censure could not exist, which is one of the ultimate bulwarks of international law."¹⁸² Sounding a more positive note, Swiss jurist Johann Kaspar Bluntschli (1808-1881) argued: "Any State—even the most powerful—will appreciably gain in honour before God and man, if it is found to be loyal and sincere in its respect for and compliance with the law of nations."¹⁸³

In 1908, U.S. Secretary of State Elihu Root told the American Society of International Law that the conduct of States was judged by "the general opinion of the world" and that governments "dread the moral isolation created by general adverse opinion and unfriendly feeling." This, the principal sanction of international law, he described through comparisons with his own domestic society, which from today's perspective appears astonishingly preoccupied with propriety and honour—in Root's words, "social esteem and standing, power and high place." To deter against anti-social behaviour, he downplayed the role of "sheriff and policeman" and highlighted reputation as "nearly everything for which men strive in life." So, in international relations, Root deprecated the sanction of war and focused on "the power of international opinion." In essence, he believed that States are subject to "recognized rules of right conduct," violation of which results in discredit and debilitating ostracism—"a nation which rests under the world's condemnation is weak, however great its material power."¹⁸⁴

M. The Rise of the Legal Paradigm

Former U.S. Secretary of State Henry Kissinger recently remarked: "World War I started not because countries broke their treaties, but because they fulfilled them to the letter." His critique is that "every country was concerned above all

180. MOUNTAGUE BERNARD, *FOUR LECTURES ON SUBJECTS CONNECTED WITH DIPLOMACY* (London 1868) LECTURE IV: THE OBLIGATION OF TREATIES, at 200.

181. THEODORE DWIGHT WOOLSEY, *INTRODUCTION TO THE STUDY OF INTERNATIONAL LAW* § 228, at 407 (6th ed., London 1888).

182. *Id.* at § 18 at 17; see also §§ 81-82 at 123-25.

183. Bluntschli to Moltke, Heidelberg, Christmas 1880, in *REVUE DE DROIT INTERNATIONAL*, *supra* note 96 at 84 ("Les lois de la guerre sur terre.").

184. Elihu Root, *The Sanction of International Law*, in 2 *AMERICAN JOURNAL OF INTERNATIONAL LAW* 451-57 (1908).

with living up to formal treaty obligations rather than to an overall concept of long-range common interest."¹⁸⁵ However, the 1914-18 generation's assessment was entirely opposite. Contemporaries were certain that failure to observe treaty obligations—or rather the absence of international machinery to compel treaty performance—had been the States' system's cardinal defect.¹⁸⁶ They saw this as the lacuna that enabled Bethmann Hollweg to say "scrap of paper" for the 1839 London Treaty guarantying Belgium's neutrality.¹⁸⁷

In repudiating the discredited honour-based diplomacy of kings, the 1914-18 generation had nowhere to turn but to a *legal* paradigm. This was a natural reflex because of the fundamental polarity between cultures of honour and legality.¹⁸⁸ No longer willing to perpetuate the *ancien régime*, the middle class reached for the nearby analogies of domestic law—a realm entirely comfortable because the centuries-old legal profession had always had a bourgeois ethos.¹⁸⁹ This borrowing was specifically advocated by France's Prime Minister Georges Clemenceau. He expressed solidarity "with President Wilson who, by establishing the foundations of the League of Nations, has had the honor of transferring the essential principles of national law into international law."¹⁹⁰ Lawyers—including Wilson, British Prime Minister David Lloyd George and Italian Prime Minister Vittorio Emanuele Orlando—were prominent among the League's founding fathers and a "legal, or rather legalistic, conception of international conflict" was embodied in the Covenant.¹⁹¹

185. HENRY KISSINGER, *DIPLOMACY* 211 (Simon & Schuster 1994); for the alliance system's ossification, see Klaus Hildebrand, *The Crisis of 1914, in GERMAN FOREIGN POLICY FROM BISMARCK TO ADENAUER* 90-93 (Louise Willmot trans., London 1989); Charles S. Maier, *Wargames: 1914-1919, in THE ORIGIN AND PREVENTION OF MAJOR WARS* 254 (Robert I. Rotberg & Theodore K. Rabb eds., Cambridge Univ. Press 1989) ("It . . . was not the binding nature of the alliances, but the possibility for defection, that proved more destabilizing. Vienna and St. Petersburg sought reassurances beyond the letter of the texts, needed demonstrative state visits, and pursued pledges of support—and, in 1914, extracted them because Paris and Berlin feared that they would seem indifferent.").

186. See TAYLOR, *supra* note 151, at 535-37. For adding international sanctions to the States' system, see HIDEKI SUGANAMI, *THE DOMESTIC ANALOGY AND WORLD ORDER PROPOSALS* 79-93 (Cambridge Univ. Press 1989).

187. Bethmann Hollweg said "Just for a word 'neutrality' a word which in wartime had so often been disregarded—just for a scrap of paper, Great Britain was going to make war on a kindred nation which desired nothing better than to be friends with her." See No. 671, Letter from Sir Edward Goschen to Sir Edward Grey, Berlin, Aug. 6, 1914, 11 *BRITISH DOCUMENTS ON THE ORIGINS OF THE WAR* 351, *supra* note 122; DIARY OF EDWARD GOSCHEN, APPENDIX B: 'A SCRAP OF PAPER', *supra* note 161, at 298-302.

188. See *Honour and Social Status*, *supra* note 4, at 30-31, 510; BERNHARDI, *supra* note 122, at 24-28; McAleer, *supra* note 90, at 30; *GERMAN OFFICER-CORPS*, *supra* note 3, at 117-38; DEÁK, *supra* note 98, at 128-38.

189. The "non-clerical literate profession" dated from the 13th century, see J.H. BAKER, *AN INTRODUCTION TO ENGLISH LEGAL HISTORY* 133-50 (2d. ed. London, 1979).

190. I *THE DELIBERATIONS OF THE COUNCIL OF FOUR (MAR. 24-JUN. 28, 1919): NOTES OF THE OFFICIAL INTERPRETER PAUL MANTOUX, MEETING XXV* 193 (Arthur S. Link trans. & ed. Princeton, 1992).

191. F.S. NORTHEDGE, *THE LEAGUE OF NATIONS: ITS LIFE AND TIMES 1920-1946* 58-59 (Leicester, 1986).

Despite, or because of, Britain's complex global position, the Foreign Office assumed "diplomacy could solve most problems that arose in world affairs."¹⁹² In this context, pre-1914 British diplomacy was exceptionally committed to the principle of dispute settlement via arbitration. Viewing international relations as "consciously ruled by law," the Foreign Office had a marked "respect for legality."¹⁹³ This characteristically British attitude, as ultimately expressed in the League of Nations as a war aim, reminded Cambridge University historian Herbert Butterfield (1900-1979) of the declining Habsburg Monarchy in the age of Metternich.¹⁹⁴ The meaning of this unflattering comparison is elucidated by Kissinger's reflection: "Because law is the expression of the status quo, Austria stood for. . . the necessity of law and the sanctity of treaties."¹⁹⁵ Such a realist critique sees peace treaties, like those of 1815 and 1919, as the codification of the outcome of the last hegemonic war, when the paramount power won legitimacy for its right to rule.¹⁹⁶ This observation by Princeton University's Robert Gilpin is useful alongside A.J.P. Taylor's remark that the ideological exigencies of the First World War gradually drove the Entente Powers, "rather against their will, to the doctrine of an international order, based upon law instead of upon force." Fighting for survival as a Great Power, Britain in particular moved ever closer to the doctrine of "the rule of law" as a response to Germany's astonishing strength.¹⁹⁷

N. Was the United States Cooler to the Legal Paradigm?

Kissinger says the premise that the States' system should be governed by international law is a deep-rooted U.S. idea tied to the belief that the same ethical principles should regulate relations between countries and between individuals.¹⁹⁸ However, official Washington was slower than London to abandon the rhetoric of honour for that of law. This reluctance is explained by several considerations. First, expanding the rule of law in international affairs was less urgent for the United States as a rising power than for Britain in decline.¹⁹⁹ Second, the Wilson administration came later to detailed thinking about war aims because the United

192. KENNEDY, *supra* note 81, at 231.

193. Clive Parry, *Foreign Policy and International Law, in BRITISH FOREIGN POLICY UNDER SIR EDWARD GREY 109-110* (F. H. Hinsley ed., Cambridge Univ. Press 1977).

194. For the League of Nations as a Metternichian "attempt to freeze the *status quo*," see HERBERT BUTTERFIELD, *CHRISTIANITY, DIPLOMACY AND WAR 115-116* (Abingdon-Cokesbury Press 1953).

195. HENRY A. KISSINGER, *A WORLD RESTORED: THE POLITICS OF CONSERVATISM IN A REVOLUTIONARY AGE 7* (Grosset & Dunlap 1964).

196. See GILPIN, *supra* note 9, at 34; BERNHARDI, *supra* note 122, at 25-27.

197. See TAYLOR, *supra* note 151, at 535-537; KENNEDY, *supra* note 81, at 209-215, 231; EKSTEINS, *supra* note 96, at xv ("Britain was, in fact, the major conservative power of the *fin-de-siècle* world. First industrial nation, agent of the Pax Britannica, symbol of an ethic of enterprise and progress based on parliament and law, Britain felt not only her pre-eminence in the world but her entire way of life threatened by the thrusting energy and instability Germany was seen to typify.").

198. See KISSINGER, *supra* note 185, at 18, 20, 22, 30, 32-34, 45-46, 52-53, 55, 161, 222-28, 234, 247, 415, 427, 438, 477, 544.

199. For the United States' geopolitical position, see, KISSINGER, *supra* note 185, at 18, 20, 30-39; on Britain's decline, see *id.* at 38; GILPIN, *supra* note 9, at 194-97; KENNEDY, *supra* note 81, at 224-32; WILSON, *supra* note 151, at 70-74.

States was neutral until April 1917. Third, the Senate's constitutional role in treaty making taught presidents that firm commitments are less easily ratified than undertakings with broad exceptions, such as those referring to national honour.²⁰⁰ Wilson himself was certain the Senate would reject any treaty committing the United States to go to war pursuant to a decision by other countries or an international body.²⁰¹ Finally, Wilson—perhaps due to his sad experience as an Atlanta lawyer—was antipathetic to the practising profession and quick to reject legalism.²⁰² He said lawyers “as a rule immediately tie their hands or powers up in technical legal limitations.”²⁰³ He told the American Commission to Negotiate Peace: “I don't want lawyers drafting this treaty.”²⁰⁴

Wilson's ambivalent attitude to law must also be seen in the light of U.S. politics. On the one side was the focus on democracy and social justice of U.S. “progressive internationalists” like Wilson who was a Democrat; on the other side, the legalism of “conservative internationalists” like Elihu Root and ex-President William Howard Taft who were Republicans.²⁰⁵ Believing law to be just one of the tools for upholding morality and realizing human progress, Wilson still “preferred to rely upon ‘diplomatic adjustment’ rather than ‘strict legal justice’ in resolving international disputes.”²⁰⁶ Thus, his idea for a League of Nations focused less on devising foolproof machinery for dispute settlement and collective security and more on opening a permanent political forum for the expression and coordination of world public opinion—the key Wilsonian concept.²⁰⁷ His plans were therefore developed with non-lawyer Colonel Edward Mandell House, rather than with Secretary of State Robert Lansing, an international lawyer whose

200. Wilson described the Senate's “treaty-marring power” in *Congressional Government* (1885), reprinted in 4 *THE PAPERS OF WOODROW WILSON* 38-39, 130-131 (Arthur S. Link ed., Princeton 1966-1994), [hereinafter PWW]; for the Senate's role, see BRUCE ACKERMAN & DAVID GOLOVE, *IS NAFTA CONSTITUTIONAL?* (Harvard Univ. Press 1995).

201. Letter from Wilson to Edward Mandell House, Mar. 22, 1918, 47 PWW 105, *supra* note 200; William H. Taft re: Mar. 28, 1918 meeting with Wilson, *id.* at 200-201; for Wilson's strenuous efforts to portray the League Covenant as a “moral, not a legal, obligation,” see *Conversation with Members of the Senate Foreign Relations Committee, Conference at the White House*, Aug. 19, 1919, 62 PWW 343, 350-351, *supra* note 200.

202. MICHAEL DUNNE, *THE UNITED STATES AND THE WORLD COURT, 1920-1935* 21 (St. Martin's Press 1988); for Wilson's legal practice, see ARTHUR WALWORTH, *1 WOODROW WILSON* 23, 34-36 (3d. ed. WW Norton & Co. 1978); AUGUST HECKSCHER, *WOODROW WILSON* 58-59 (Maxwell Macmillan International 1991); ALEXANDER L. GEORGE & JULIETTE L. GEORGE, *WOODROW WILSON AND COLONEL HOUSE: A PERSONALITY STUDY* 18-20 (2d. ed., Dover Publications 1964).

203. Wilson's late 1916 words to lawyer Samuel Thompson, in latter's Jan. 15, 1917 letter asking for Federal Trade Commission appointment, see 40 PWW 490, *supra* note 200.

204. Jan. 8, 1919, quoted by U.S. Secretary of State Robert Lansing. See 54 PWW 4, *supra* note 200.

205. THOMAS J. KNOCK, *TO END ALL WARS: WOODROW WILSON AND THE QUEST FOR A NEW WORLD ORDER* 49-69, 267-268 (Princeton Univ. Press 1992).

206. DUNNE, *supra* note 202, at 21.

207. *Conversation with Members of the Senate Foreign Relations Committee, Conference at the White House*, Aug. 19, 1919, 62 PWW 363, 372, 388-89, *supra* note 200.

"legalistic opinions" were distasteful to Wilson.²⁰⁸

Although Wilson's speeches frequently referred to international law, he never abandoned the discourse of honour. For example, in May 1916 Wilson talked about a "new and more wholesome diplomacy" resting on "the same high code of honour that we demand of individuals."²⁰⁹ His April 1917 war message to Congress twice referred to the future world organization as a "League of Honour."²¹⁰ Honour also featured in his July 10, 1919 explanation of the League Covenant: "There is no provision for military action except upon advice of the [League] Council, advice given to the several governments. Of course it follows that the several governments will take that advice or not, as they please, and it will be a matter of honor with them whether they will or not. There is no legal obligation."²¹¹ However, Wilson's yardstick for measuring national honour was democratic public opinion rather than the *ancien régime's* aristocratic values.

O. Was Honour No Longer Sufficient?

As early as August 1915, Sir Edward Grey wrote to Colonel House about a "League of Nations that could be relied on to insist that disputes between any two nations must be settled by arbitration, mediation, or conference of others." Grey said: "International Law has hitherto had no sanction. The lesson of this war is that the powers must bind themselves to give it a sanction."²¹² A month later, he asked House: "Would the President propose that there should be a League of Nations binding themselves to side against any power which broke a treaty. . . or which refused, in case of dispute, to adopt some other method of settlement than that of war?"²¹³

Grey's successor as Foreign Secretary, Arthur James Balfour asked: "If existing Treaties are no more than scraps of paper, can fresh treaties help us?" Relaying to Washington, British principles for peace, Balfour in January 1917 portrayed the pre-war "community of nations" as "plentifully supplied indeed with international laws, but with no machinery for enforcing them." His three conditions for a durable peace included ensuring treaty compliance: "Behind International law and behind all Treaty arrangements for preventing or limiting hostilities some form of International sanction should be devised which would give

208. ARTHUR WALWORTH, *WILSON AND HIS PEACEMAKERS: AMERICAN DIPLOMACY AT THE PARIS PEACE CONFERENCE 1919* 8 (W. W. Norton & Co. 1986).

209. Address to League to Enforce Peace, May 27, 1916, 37 *PWW* 113, *supra* note 200; the League of Nations was then seen by U.S. "progressive internationalists" like Wilson as arising from stalemate and mediation, but by Sir Edward Grey and U.S. "conservative internationalists" as a war aim realizable via Entente victory, *see* KNOCK, *supra* note 205, at 57-58; DAVID FRENCH, *BRITISH STRATEGY AND WAR AIMS 1914-1916* 190-91 (Allen & Unwin 1986).

210. Address to Joint Session of Congress, Apr. 2, 1917, 41 *PWW* 524, *supra* note 200.

211. *THE COMPLETE PRESS CONFERENCES 1913-1919* (Robert C. Hildebrand ed., Princeton 1985); 50 *PWW* 790, *supra* note 200.

212. Sir Edward Grey to Colonel House, London, Aug. 10, 1915, in 2 *THE INTIMATE PAPERS OF COLONEL HOUSE* 87-88 (Charles Seymour ed., Boston-New York 1926).

213. Sir Edward Grey to Colonel House, *supra* note 212, at 89.

pause to the hardest aggressor.”²¹⁴ Re-establishing “the sanctity of treaties” was also the first of Lloyd George’s three conditions for “a just and lasting peace” in his war aims speech to the Trades Union Congress on January 5, 1918.²¹⁵

The contrast between the U.S. focus on honour and the British fixation on law became explicit in June 1918. Sharing plans for a League of Nations, House copied to Wilson a letter written to Lord Robert Cecil, then British Minister of Blockade. With respect to treaty obligation, House’s plan stayed within pre-war thinking by relying on dishonour as the sanction for breach of treaty:

One of the most essential features of any league seems to me to be the installation of a moral standard such as that maintained among individuals of honor. Even before Germany smashed the international fabric, reprehensible conduct was condoned under the broad cover of patriotism; actions which in individuals would have been universally condemned and the perpetrators ostracised from society. I believe that the most vital element in bringing about a world-wide reign of peace is to have the same stigma rest upon the acts of nations as upon the acts of individuals. When the people of a country are held up to the scorn and condemnation of the world because of the dishonorable acts of their representatives, they will no longer tolerate such acts. To bring this about will not I think be so difficult as it would seem, and when this condition is realized, a nation may be counted upon to guard its treaty obligations with the same fidelity as an individual guards his honor.²¹⁶

Now Assistant Secretary of State for Foreign Affairs with special responsibility for planning a League of Nations, Cecil took issue with House’s emphasis on honour:

I notice that you propose that the components of the league should make a profession of faith to the effect that they will abide by a code of honour. I think it would be all to the good to have such a profession included in the instrument by which the league of peace was constructed, but I am afraid I do not think that by itself it could be relied upon.²¹⁷ The example of Germany in this war shows that under the pressure of false teaching and national danger there is no crime which a civilized nation will not commit, and the same has been found true over and over again in history. I am convinced that unless some form of coercion can be devised which will work more or less automatically no league of peace will endure. You refer to the history of the civilization of individuals; but surely the great

214. Jan. 16, 1917, British Ambassador Sir Cecil Arthur Spring Rice gave U.S. Secretary of State Robert Lansing a message which Balfour had written (Jan.13) to Rice, *see* 40 PWW 499-503, *supra* note 200.

215. Cabled to Woodrow Wilson on Jan. 5, 1918, *see* 45 PWW 486, *supra* note 200.

216. Edward Mandell House to Lord Robert Cecil, Magnolia, Massachusetts, Jun. 25, 1918, 48 PWW 424-26, *supra* note 200; honour also features prominently in “Suggestion for a Covenant of a League of Nations” sent by House to Wilson on Jul. 16, 1918, *see id.* at 630-637; NORTHEDGE, *supra* note 191, at 31-33.

217. An echo of House’s draft survived in the reference to “open, just and honourable relations between nations” in Preamble, Covenant of the League of Nations, Part 1, Treaty of Peace between Germany and the Allied and Associated Powers, Jun. 28, 1919, *in* 225 CTS 195-205.

instrument of law and order has been the establishment of the doctrine of the supremacy of law. So long as codes of law were only, or mainly codes of honour or good conduct they were always disobeyed by anyone who was sufficiently powerful to do so.—²¹⁸

P. Honour Replaced by Law in 1919

As a fading theme, discourse about “honour” survived the Paris Peace Conference. For example, France’s honour was said to have been at stake in the June 1940 discussion about whether to abandon Great Britain and make a separate peace with Germany.²¹⁹ But, after 1919-20 “honour” was largely vestigial, because—as told to the German delegation at the Paris Peace Conference—“the old era is to be left behind and nations as well as individuals are to be brought beneath the reign of law.”²²⁰ The Covenant of the League of Nations became part of each one of the 1919-20 peace treaties, which as a body established a new international order abandoning the old chivalric archetype for the paradigm of domestic law. Domestic legal systems were the model for the Covenant’s four interrelated innovations: “international peace and security”; a duty to seek peaceful settlement of international disputes; efforts to make treaties legally binding; and restraints on recourse to war.

First, Covenant provisions went a long way toward abrogating “privity of conflict”—i.e. the customary rule that a non-belligerent third party had no right to interfere (*locus standi*) in a bilateral international dispute.²²¹ This was replaced by an entirely new juridical concept called “international peace and security”—a communitarian idea which insisted that “any war or threat of war, whether immediately affecting any of the Members of the League or not, is hereby declared a matter of concern to the whole League.”²²² The “peace of Europe” and the “general peace” had featured in earlier treaties.²²³ However, past references to “peace” pointed principally to the literal absence of war, in connection with the legal states of war and peace, then recognized by both international and domestic law.²²⁴ By contrast, the Covenant envisaged “international peace” both *literally* as

218. Lord Robert Cecil to Edward Mandell House, London, Jul. 22, 1918, 49 PWW 226, *supra* note 200.

219. WILLIAM L. SHIRER, *THE COLLAPSE OF THE THIRD REPUBLIC: AN INQUIRY INTO THE FALL OF FRANCE IN 1940* 829, 831 (Simon and Schuster 1969).

220. Letter to the President of the German Delegation covering the Reply of the Allied and Associated Powers to the Observations of the German Delegation on the Conditions of Peace, Jun. 16, 1919, 112 BRITISH FOREIGN AND STATE PAPERS 248.

221. Elihu Root to Edward Mandell House, Clinton, New York, August 16, 1918, 49 PWW 269, *supra* note 200, read by President Wilson on Aug. 18, 1918.

222. See Article 11, Covenant of the League of Nations.

223. For “the general Peace of Europe,” see Preamble, Treaty between Great Britain and Prussia, Jan. 16, 1756, in 40 CTS 293, and Preamble, Treaty between Great Britain and Prussia, Apr. 11, 1758, in 41 CTS 18; “the General peace,” Art. 1, Treaty of Alliance between Austria, Great Britain, Prussia and Russia, Mar. 25, 1815, in 64 CTS 32; “the maintenance of the general peace,” Preamble and Title I, Convention for the Pacific Settlement of International Disputes, Jul. 29, 1899, in 187 CTS 410-11.

224. Helmut Rumpf, *The Concepts of Peace and War in International Law*, in 27 GERMAN

the absence of violence and *figuratively* as the name for the League of Nations' new jurisdiction, consciously modeled on the "King's peace" of the early English Common Law.²²⁵

Second, the Covenant placed strong emphasis on seeking peaceful settlement of international disputes. There was to be the possibility of political settlement by the League Council and Assembly, and of resolution of justiciable disputes by binding third-party arbitration, including determinations by a new Permanent Court of International Justice, which began operating in 1922.²²⁶ During the first decade of its existence, this Court did important work which sustained an "element of idealism about the role of third party dispute settlement processes."²²⁷

Third, efforts to make treaties *legally* binding were encouraged by the memory that Germany's 1914 invasion of Belgium had been a treaty violation—for Great Britain the *casus belli*. Although former German Emperor William II ultimately succeeded in staying in exile in Holland, the Versailles Treaty created an important precedent by demanding that he personally stand trial "for a supreme offence against the sanctity of treaties."²²⁸ Moreover, the Covenant called for "scrupulous respect for all treaty obligations." Because President Wilson wanted foreign relations democratized and subject to popular control, his Fourteen Points decreed that diplomacy "must proceed always frankly and in the public view." The treaties ending the war were to be "open covenants of peace, openly arrived at, after which there shall be no private international understandings of any kind."²²⁹ Implementation was via the Covenant stipulation that no treaty was to be "binding" unless registered with the Secretariat which had to publish a comprehensive *League of Nations Treaty Series*.²³⁰ Wilson argued that this "open diplomacy" would enable citizens to follow foreign affairs and monitor State compliance with international law.²³¹ Moreover, the 1920 Statute of the Permanent Court of International Justice broke new ground by giving the treaty primacy among the sources of international law—before custom, general principles of law,

YEARBOOK OF INTERNATIONAL LAW 429-43 (1984).

225. Parliamentary Papers, 1919, Cmd. 151, 12-19; FREDERICK POLLOCK & FREDERIC MAITLAND, 1 THE HISTORY OF ENGLISH LAW BEFORE THE TIME OF EDWARD I 44-45; vol. 2:462-464 (Cambridge Univ. Press 1952); Sir Frederick Pollock, *The King's Peace*, in OXFORD LECTURES AND OTHER DISCOURSES 88-89 (Books For Libraries Press 1890).

226. SHABTAI ROSENNE, THE WORLD COURT: WHAT IT IS AND HOW IT WORKS 21-26 (Oceana Publ. 1973).

227. SHABTAI ROSENNE, BREACH OF TREATY 9 (Grotius Publ. Ltd. 1985).

228. Versailles Treaty, at art. 227; see also JAMES WILLIS, PROLOGUE TO NUREMBERG: THE POLITICS AND DIPLOMACY OF PUNISHING WAR CRIMINALS OF THE FIRST WORLD WAR (London 1982).

229. The first of Wilson's "Fourteen Points," see An Address to a Joint Session of Congress, Jan. 8, 1918, in 45 PWW 536, *supra* note 200.

230. See The Registration and Publication of Treaties as Prescribed under Article 18 of the Covenant of the League of Nations: Memorandum Approved by the Council, Meeting in Rome, May 19, 1920, 1 LEAGUE OF NATIONS TREATY SERIES 7-13 (1920).

231. "One of the things that the League of Nations is intended to watch is the course of intrigue. Intrigue cannot stand publicity, and if the League of Nations were nothing but a great debating society, it would kill intrigue." Address at the Metropolitan Opera, Mar. 4, 1919, 55 PWW 414, *supra* note 200.

judicial decisions, and the teachings of publicists.²³² As an international legal device, the treaty had clearly risen since 1914, when Bethmann Hollweg had made his disparaging remark about a "scrap of paper."

Fourth, the League sought to place some international disciplines on a State's right to wage war, recourse to which had been largely unregulated by the international law of 1914.²³³ The strong condemnation of Germany's "criminal" behaviour was largely *ex post facto*—more the cause of international law than its result.²³⁴ Launching the First World War was by 1919 retroactively judged to have been a criminal act because of a visceral conviction rooted in the superadded horrors of 20th century war: "In the view of the Allied and Associated Powers, the war which began on August 1, 1914, was the greatest crime against humanity and the freedom of peoples that any nation, calling itself civilised, has ever consciously committed."²³⁵ The Allies "regard this war as a crime deliberately plotted against the life and liberties of the peoples of Europe."²³⁶ King George V wrote about his cousin William II: "I look upon him as the greatest criminal known for having plunged the world into this ghastly war" and, in conversation with President Wilson, the King referred to "that unspeakable Kaiser whose crimes have scandalized the entire world."²³⁷ Elihu Root said the Habsburg and Hohenzollern rulers were "unrepentant professional criminals"; Supreme Allied Commander Ferdinand Foch looked on the German military as "an army of scientific and convinced hooligans"; and Wilson thought Germany an "outlaw nation."²³⁸

In a letter underlined by Wilson, Root specifically pointed to domestic criminal law as the source for the new international order:

If I make a contract with you and you break it, it is no business of our neighbour. You can sue me or submit, and he has nothing to say about it. On the other hand, if I assault and batter you, every neighbour has an interest in having me arrested and punished, because his own safety requires that violence shall be restrained. At the basis of every community, lies the idea of organization to preserve the peace.

232. On the Article 38 hierarchy, see CLIVE PARRY, *THE SOURCES AND EVIDENCES OF INTERNATIONAL LAW* 28 (Manchester Univ. Press 1965); SIR IAN M. SINCLAIR, *THE VIENNA CONVENTION ON THE LAW OF TREATIES* 2 (Manchester, 1973).

233. Parry, *Foreign Policy and International Law*, *supra* note 193 at 92-93.

234. Fritz Dickmann, *Die Kriegsschuldfrage auf der Friedenskonferenz von Paris 1919*, in 197 *HISTORISCHE ZEITSCHRIFT* 1-101 (1963); HERMAN KANTOROWICZ, *GUTACHTEN ZUR KRIEGSSCHULD-FRAGE 1914* 99-100 (Immanuel Geiss ed., Frankfurt 1967).

235. Letter to the President of the German Delegation covering the Reply of the Allied and Associated Powers to the Observations of the German Delegation on the Conditions of Peace, Jun. 16, 1919, 112 *BRITISH FOREIGN AND STATE PAPERS* 245.

236. Reply of the Allied and Associated Powers to the Observations of the German Delegation on the Conditions of Peace, Jun. 16, 1919, 112 *BRITISH FOREIGN AND STATE PAPERS* 281-82.

237. Diary entry of Nov. 9, 1918, KENNETH ROSE, *KING GEORGE V* 229 (London, 1983); Diary of Wilson's personal physician, Rear Admiral Cary T. Grayson, Feb. 23, 1919, 55 *PWW* 228, *supra* note 200.

238. Elihu Root to Edward Mandell House, Clinton, New York, Aug. 16, 1918, read by President Wilson on Aug. 18, 1918, 49 *PWW* 270, *supra* note 200; Foch's note on the military frontier with Germany, Jan. 10, 1919, 55 *PWW* 504, *supra* note 200; Wilson's address at the Metropolitan Opera, Mar. 4, 1919, 55 *PWW* 414 and 417, *supra* note 200.

Without that idea really active and controlling there can be no community of individuals or of nations.²³⁹

In this vein, the Covenant established machinery to help League Members deal with wars of aggression. Moreover, State responsibility for the commission of an offence was written into the leading article on "reparation" in the treaty with each one of the defeated Central Powers. Germany, Austria, and Hungary were compelled to "accept" that their "aggression" had "imposed" the war on the Allies.²⁴⁰ Bulgaria and Turkey were made to recognize that they had joined a "war of aggression which Germany and Austria-Hungary waged against the Allied and Associated Powers."²⁴¹ The 1919-20 peace treaties thus began modern international law's progressive stigmatization of the "war of aggression" which was ultimately criminalized by the 1945 Charter of the Nuremberg International Military Tribunal, which instituted individual responsibility for "crimes against peace."²⁴²

Q. League of Nations' Discourse on Hitler's "Sports Palace" Diplomacy

The United Nations International Law Commission in the 1960s used *Sportpalast Diplomatie* for German Chancellor Adolf Hitler's "repeated, flagrant, and at times violent instances of deliberate breaches of treaty, not as a matter of minor administrative failing or of unanticipated judicial pronouncement, but as a matter of major politics conducted at the highest level and publicized through the mass media."²⁴³ As foreshadowed in his 1925 book *Mein Kampf*, Hitler sought to break free of "the chains of the Versailles Treaty" and destroy the European order erected at the Paris Peace Conference.²⁴⁴ Calculated acts toward this end were his March 16, 1935 decree establishing universal military service to create a 550,000 man German army, and the March 7, 1936 German military occupation of the

239. Elihu Root to Edward Mandell House, Clinton, New York, Aug. 16, 1918, underlined by President Wilson on Aug. 18, 1918, 49 PWW 270, *supra* note 200.

240. See Article 231, Versailles Treaty, *supra* note 217; Article 177, Treaty of Peace between Austria and the Allied and Associated Powers, signed at Saint-Germain-en-Laye, Sep. 10, 1919, in 226 CTS 8-169; Article 161, Treaty of Peace between Hungary and the Allied and Associated Powers, Jun. 4, 1920, see <http://www.lib.byu.edu/~rdh/wwi/versa/tri1.htm> (last visited Apr. 12, 2002). Former Foreign Secretary Lord Grey in a February 14, 1929 interview opined, "It was a very bad mistake to attribute the whole responsibility for the war to the Central Powers in the Treaty of Versailles." See G. P. GOOCH, *STUDIES IN DIPLOMACY AND STATECRAFT* 107 (London 1942).

241. Art. 121, Treaty of Peace between Bulgaria and the Allied and Associated Powers, Nov. 27, 1919, in 226 CTS 332-434; Article 231, Treaty of Peace between Turkey and the Allied and Associated Powers, Aug. 10, 1920, see <http://www.lib.byu.edu/~rdh/wwi/versa/sevres1.html> (last visited Apr. 12, 2002).

242. TELFORD TAYLOR, *THE ANATOMY OF THE NUREMBERG TRIALS: A PERSONAL MEMOIR* 37-38, 41, 50-51, 57-77, 648 (New York 1992).

243. ROSENNE, *supra* note 227, at 11.

244. MANN, *supra* note 114, at 843-62; IAN KERSHAW, *HITLER 1889-1936: HUBRIS* 150, 316, 424, 443 (W. W. Norton & Co. 1998); Klaus Hildebrand, *War in Peace and Peace in War: On the Problem of Legitimacy in the History of the International Order, 1931-1941*, in *GERMAN FOREIGN POLICY*, *supra* note 185 at 150-69.

Rhineland—both measures violating the Versailles Treaty; the latter also contrary to the 1925 Locarno Pact.²⁴⁵ “Restoring the German people’s honour” was Hitler’s oft-repeated theme for domestic consumption.²⁴⁶ However, there was no honour-based argument in the very extensive League discussions about Germany’s treaty violations. In this League context, there were two tangential references to “honour,” both referring to the Rhineland. First, Hitler’s favourite foreign policy expert, Joachim von Ribbentrop justified the occupation before the Council with long “legal and practical political” arguments. However, he celebrated the “restoration of the sovereignty of the Reich over its whole territory,” saying, “a heavy moral and political burden has been removed from the German people, which now at last . . . sees itself re-established in honour and freedom.”²⁴⁷ A sour note on honour, by contrast, sounded from France’s Prime Minister Léon Blum who assured the Assembly: “We have attacked the spirit of war, by which I mean those age-old conceptions of policy, morality and collective honour which were the justification of war.”²⁴⁸

Reacting to Germany’s unilateral denunciation of the arms limitation provisions of the Versailles Treaty, diplomats said nothing to the Council about “honour” or “dishonour.” Instead, they portrayed Germany’s glaring treaty breach as a *legal* violation within the context of the League system. For example, France’s Foreign Minister Pierre Laval said: “The peoples of the world know that respect for plighted faith. . . is not only a moral principle but is the living law of the League of Nations.”²⁴⁹ He affirmed France’s devotion to the League which he recognized as “the highest international authority” which has “declared that no country can repudiate its international undertakings. . . and has envisaged a more effective repression of such infractions of international law in the future.”²⁵⁰

Czechoslovakia’s Foreign Minister Edvard Beneš said: “All organised and civilised human society must be based on that most fundamental principle of international law: *pacta sunt servanda*. Without this principle, the League of Nations would cease to have any meaning, any foundations, or any possibility of working normally.”²⁵¹ After echoing these sentiments, Soviet Foreign Minister

245. Germany’s military forces were limited to 100,000 men by Versailles Treaty, Article 163. The Rhineland could be neither fortified nor occupied by German military forces by virtue of Versailles Treaty, Articles 42-43, “collectively and severally” guaranteed by the Treaty of Mutual Guarantee Between Germany, Belgium, France, Great Britain and Italy, Oct. 16, 1925, *in* 54 LEAGUE OF NATIONS TREATY SERIES 289-301; KERSHAW, *supra* note 244 at 549-52, 582-89.

246. See WILLIAM L. SHIRER, *THE RISE AND FALL OF THE THIRD REICH: A HISTORY OF NAZI GERMANY* 284, 292 (Simon and Schuster 1960).

247. 5th Meeting, 91st Extraordinary Session of the Council, part 1, Palace of St. James, London, Mar. 19, 1936, LEAGUE OF NATIONS OFFICIAL JOURNAL 337 (Apr. 1936).

248. 19th Plenary Meeting, Records of the 16th Ordinary Session of the Assembly, part 2, Jul. 1, 1936, LEAGUE OF NATIONS OFFICIAL JOURNAL 28, SPECIAL SUPPLEMENT NO. 151 (1936).

249. 2nd Meeting, 85th Extraordinary Session of the Council, Apr. 16, 1935, *in* LEAGUE OF NATIONS OFFICIAL JOURNAL 550 (May 1935).

250. 3rd Meeting, 85th Extraordinary Session of the Council, Apr. 17, 1935, *in* LEAGUE OF NATIONS OFFICIAL JOURNAL 564 (May 1935).

251. 2nd Meeting, 85th Extraordinary Session of the Council, Apr. 16, 1935, *in* LEAGUE OF NATIONS OFFICIAL JOURNAL 554 (May 1935).

Maxim Litvinov compared the international community to a town, and countries to individual townsmen:

Let us suppose that in a certain town private citizens are allowed to carry arms. Theoretically this right should be extended to all the inhabitants of such a town. Should, however, any citizen publicly threaten his fellow-townsmen... the municipality is scarcely likely to hasten to issue to such a citizen a licence to carry firearms, or quietly to tolerate his furnishing himself with such arms by illegal means.²⁵²

Using the same metaphor, Spain's Ambassador Salvador de Madariaga added: "The important thing when a man in the street carries a revolver is not to know what is its caliber or even if he has other weapons in his pocket, but to know whether he is a policeman or a criminal." He believed that each country should have "equality in the right to possess armaments" but also "in the duty of utilising them in a legal, a juridical manner within the framework of a civilised society."²⁵³

Reacting to Germany's unilateral remilitarization of the Rhineland, French Foreign Minister Pierre-Étienne Flandin pleaded violations of the Versailles and Locarno treaties and told the Council that "the law should be applied."²⁵⁴ He argued that "under international law, no one has the right to take the law into his own hands" and offered to have the dispute "settled by the highest international court—namely, the Permanent Court of International Justice, which is placed under the highest authority of the League of Nations."²⁵⁵ In the same vein, Prime Minister Blum told the Assembly: "Two breaches of international law have been committed—the breach of the Covenant and the breach of a solemn Treaty. Both have resulted in a *de facto* situation that is contrary to law."²⁵⁶ A similar juridical vein marked British Foreign Secretary Anthony Eden's address to the Council:

A patent and incontestable breach of the provisions of the Treaty of Versailles relating to the demilitarised zone has been committed. [. . .] The question before us does not concern a few Powers only. It is of concern to all who value the sanctity of treaty undertakings and the reign of law in international affairs.²⁵⁷

252. 3rd Meeting, 85th Extraordinary Session of the Council, Apr. 17, 1935, in LEAGUE OF NATIONS OFFICIAL JOURNAL 557 (May 1935).

253. *Id.* at 559.

254. 1st Meeting, 91st Extraordinary Session of the Council, part 1, St. James Palace, London, Mar. 14, 1936, in LEAGUE OF NATIONS OFFICIAL JOURNAL 313 (Apr. 1936).

255. 6th Meeting, 91st Extraordinary Session of the Council, part 1, St. James Palace, London, Mar. 20, 1936, in LEAGUE OF NATIONS OFFICIAL JOURNAL 341 (Apr. 1936).

256. 19th Plenary Meeting, Records of the 16th Ordinary Session of the Assembly, part 2, Jul. 1, 1936, in LEAGUE OF NATIONS OFFICIAL JOURNAL 29, SPECIAL SUPPLEMENT NO. 151 (1936).

257. 4th Meeting, 91st Extraordinary Session of the Council, part 1, St. James Palace, London, Mar. 18, 1936, in LEAGUE OF NATIONS OFFICIAL JOURNAL 326-27 (Apr. 1936).

CONCLUSION

The 1935-36 League of Nations' response to Hitler's unilateral denunciation of key treaty provisions reminds us that, from 1919, discourse in the international States' system occurred principally inside, a largely new, law-based matrix which was consciously antithetic to aristocratic honour. The diplomacy of the preceding centuries had imagined the State as a gentleman with a highly developed sense of honour, readily vindicated on the battlefield. After the First World War, League of Nations diplomacy tended to view the State as a middle-class citizen in a world community, governed by law and committed to the peaceful settlement of international disputes. This Wilsonian *Weltanschauung* may have appeared somewhat naive from the standpoint of 1939, when there had to be amazement at the prescient realism of Marshall Foch, who in 1919 had known that the Versailles Treaty was just a twenty years' truce.²⁵⁸ Today, however, Woodrow Wilson seems the greater prophet, because his compelling vision is consistent with long-term historical trends showing victories for liberal democratic States which, by their nature, do not wage war against each other.²⁵⁹ In this light, the abandonment of the rhetoric of honour can be seen as a healthy step away from the warlike ethos of aristocratic societies which, at very great cost, inordinately emphasized ideas of greatness and glory.

258. See MANN, *supra* note 114, at 903.

259. See FUKUYAMA, *supra* note 5, at 262-265.

