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The League That Wasn't: American Designs for a Legalist-Sanctionist League of Nations and the Intellectual Origins of International Organization, 1914–1920*

In 1919 “isolationism” was a word not yet in circulation, much less a disposition seen as the principal antagonist of a new Wilsonian “internationalism.” One could be forgiven for assuming otherwise. So many narratives of the political fight over the League of Nations portray President Woodrow Wilson as the embodiment of a monolithic U.S. internationalism that represented the only meaningful alternative to traditional isolationism. Such books, produced even today but first written surrounding World War II—when “isolationism” entered common usage and “internationalism” came to connote nonisolationism—tell the defeat of the Versailles Treaty as a two-sided morality tale. Wilson’s retrospective sympathizers tar League opponents for hewing to naïve nonentanglement, hidebound nationalism, or greedy partisanship. Realist critics, meanwhile, offer no less simple a schematization, seeing their naysaying selves in Wilson’s contemporaneous foes.¹

The twilight of the Cold War illuminated some creative intellectual positions among League opponents. Ralph Stone showed that senators irreconcilable to Wilson’s Treaty of Versailles championed international engagement nonethe-

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1. Wilson’s sympathizers in this vein include Thomas Bailey, *Woodrow Wilson and the Great Betrayal* (New York, 1945); John Milton Cooper, *Breaking the Heart of the World: Woodrow Wilson and the Fight for the League of Nations* (Cambridge, England, 2001); Denna Frank Fleming, *The United States and the League of Nations, 1918–1920* (New York, 1932); Denna Frank Fleming, *The United States and World Organization, 1920–1933* (New York, 1938); Thomas Knock, *To End All Wars: Woodrow Wilson and the Quest for a New World Order* (Princeton, NJ, 1992); Arthur S. Link, *Woodrow Wilson: Revolution, War, and Peace* (Arlington Heights, IL, 1979). Realist anti-Wilsonians include Henry Kissinger, *Diplomacy* (New York, 1994); Robert Osgood, *Ideals and Self-Interest in America’s Foreign Relations* (Chicago, 1953). Although “isolationism” became a prominent label only in the 1930s, contemporaries in 1919 did speak of departing from “isolation.”

less. Lloyd Ambrosius revealed that many Republicans favored a military guarantee of French security more than Wilson ever did. Yet the basic polarity between Wilson and his “detractors” remained in their narratives and dominates still. Recent highly charged debates among liberal internationalists have fixated on Wilsonianism, assuming it a likely if not inevitable model for twenty-first-century policy, even though no one can agree on Wilsonianism’s original meaning or normative value.² Wilson, the premise goes, supplied the only really comprehensive and constructive vision of American internationalism in his time and perhaps beyond. His detractors’ most fervent hope was to dilute his design.

All this has reduced early twentieth-century internationalism to a caricature: one-dimensional, polarizing, and, not least, inaccurate. While the United States was a second-rank power, immersed in the states system but unable to dominate it, American ideas of internationalism were at their most vibrant and diverse. Throughout the First World War, preeminent American politicians rallied around a non-Wilsonian vision as bold as Wilson’s. They campaigned to create an international league dedicated to developing international law and enforcing judicial settlement upon member states. This concept—devised most prominently by two former presidents, Theodore Roosevelt and William H. Taft, and the Republican party’s leading voice on international affairs, Senator Elihu Root—won mostly acclaim in America. Then, suddenly, the alliance of Wilson and Whitehall rebuffed legalism and sanctionism. At the peace conference, they put forth a looser, organicist alternative, and political debate crystallized around it. And subsequent internationalists and historians, dwelling on the feisty but narrow Senate debate of 1919 to 1920, reading their own age’s internationalism-isolationism binary back into the past, overlooked the league that wasn’t.³

2. Ralph Stone, *The Irreconcilables: The Fight against the League of Nations* (Lexington, KY, 1970); Lloyd Ambrosius, “Wilson, the Republicans, and French Security after World War I,” *Journal of American History* 59, no. 2 (September 1972): 341–52; Lloyd Ambrosius, *Woodrow Wilson and the American Diplomatic Tradition* (Cambridge, England, 1987); see also William Widenor, *Henry Cabot Lodge and the Search for an American Foreign Policy* (Berkeley, CA, 1980). For recent policy debates over Wilsonianism’s prescriptive value, see G. John Ikenberry, Thomas Knock, Anne-Marie Slaughter, and Tony Smith, *The Crisis of American Foreign Policy: Wilsonianism in the Twenty-First Century* (Princeton, NJ, 2009).

3. This article depicts legalism-sanctionism and Wilsonianism as the two preeminent pro-league competitors during World War I and examines their philosophical underpinnings. Previous scholarship has identified neither the intellectual seriousness of, nor the extent of political support for, designs for a legalist-sanctionist league. Francis Anthony Boyle, in *Foundations of World Order: The Legalist Approach to International Relations (1898–1922)* (Durham, NC, 1999), elides the antagonism between Wilson and the legalists. David Patterson, in “The United States and the Origins of the World Court,” *Political Science Quarterly* 91, no. 2 (Summer 1976): 279–95, identifies Taft and Root as presenting a constructive legalist challenge to Wilson but neglects the importance they placed on coercive sanctions, ignores Theodore Roosevelt, and leaves Wilson’s antilegalism insufficiently explained. Jonathan Zasloff, in “Law and the Shaping of American Foreign Policy: From the Gilded Age to the New Era,” *New York University Law Review* 78 (April 2003): 239–373, perceptively analyzes Root as a “classical legalist,” but his conclusion that Root naively preferred an international order based on moral rather than physical sanction better applies before and after the war than during it, when Root

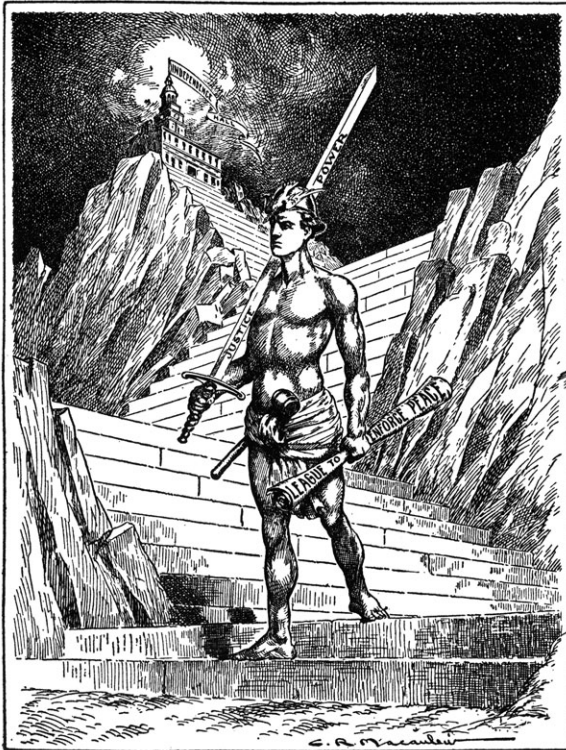
This article traces the intellectual development and political reception in America of what it terms the “legalist-sanctionist league,” whose essential components were law and enforcement.⁴ The American debate over postwar world order began in 1914 when Roosevelt outlined a great-power league to put force behind law. Like-minded advocates enjoyed the initiative for three years. Taft, the lead activist, presided over the League to Enforce Peace (LEP) (Figure 1). It was likely the world’s largest pro-league organization, and mounting public support adumbrated the program’s potential to inspire bipartisan agreement. After 1918, however, attention shifted to Wilson’s stark alternative embodied in the League of Nations Covenant. Root resisted, pleading to strengthen the organization’s commitment to law by obligating the development of international legal code and the judicial settlement of international disputes. But efforts to weaken existing articles of the Covenant absorbed the Senate. Wilson was even less receptive. Even though embracing legalistic ideas might have won him the backing of key Republicans, Wilson refused. He sidestepped Root’s overtures, dismissing lawyers as relics.

Why did Wilson spurn his fellow internationalists? What kept legalist-sanctionism and Wilsonianism apart? On the surface, even well below, little separated them. Root as often as Wilson called for the enlightenment of national interests and the education of democratic publics. Theirs were projects to unleash the harmony they assumed to underlie the world’s peoples, not to manage a world of irreducible conflict. Both camps, in fact, envisioned their league as the germ of a global polity. The international realm was destined transform from anarchy to community, culminating, they argued, in something like America, or the Americas, writ large. These beliefs place them closer to “idealists” than “realists” in the terms of international relations theory, notwithstanding the considerable ambiguities of those categories.⁵ Despite harboring

attempted to devise a scheme by which armed force would guarantee international judicial settlement and shrewdly perceived certain problems therein. Significant works on single statesmen include David Burton, *Taft, Wilson and World Order* (Cranbury, NY, 2003); Philip Jessup, *Elihu Root*, vol. 2 (New York, 1938); Richard Leopold, *Elihu Root and the Conservative Tradition* (Boston, 1954), 124; and especially Martin David Dubin, “Elihu Root and the Advocacy of a League of Nations, 1914–1917,” *Western Political Quarterly* 19, no. 3 (September 1966): 439–55. Finally, the vast literature on Theodore Roosevelt almost completely ignores Roosevelt’s pro-league agitation, usually painting him as a realist and Wilson’s polar opposite. John Milton Cooper’s *The Warrior and the Priest: Woodrow Wilson and Theodore Roosevelt* (Cambridge, MA, 1983) instead sees Wilson and Roosevelt as virtually intellectually synonymous but blurs their differences concerning international organization. A stellar new treatment of legalist internationalism is Benjamin Coates, “Transatlantic Advocates: American International Law and U.S. Foreign Relations, 1898–1919” (Ph.D. diss., Columbia University, 2010).

4. For eighty years now, scholars of international politics have exposed the faults of legalism and collective security. That is not the point of this article. Although legalist-sanctionist ideas will receive critical evaluation, the prime concern is to establish how legalist-sanctionism looked at the time.

5. Recent work interrogating “realism” and “idealism” and finding little to recommend the polarity includes Andreas Oslander, “Rereading Early Twentieth Century IR Theory: Idealism Revisited,” *International Studies Quarterly* 42, no. 3 (September 1998): 409–32; Brian Schmidt,



LEAGUE TO ENFORCE PEACE

Figure 1: A cartoon commemorating the League to Enforce Peace's first public meeting, where the organization unveiled its proposal for an international organization combining law and force or, as the sword reads, "justice" and "power." Source: *League to Enforce Peace, Independence Hall Conference Held in the City of Philadelphia, Bunker Hill Day (June 17th), 1915, Together with the Speeches Made at a Public Banquet in the Bellvue-Stratford Hotel on the Preceding Evening* (New York: League to Enforce Peace, 1915); thanks to Benjamin Coates.

transformative ambitions, moreover, neither legalist-sanctionists nor Wilsonians yet proposed to exceed a voluntarist notion of international enforcement. There would be no supranationally constituted or controlled military force, only the pooled arms of independent states.

But a shared idealism as opposed to realism did not make them political allies in their time; realism was after all not a coherent school of thought arrayed against "idealism" until the 1940s. Nor did idealism exhaust the philosophical issue. Philosophical differences infused the legalist-sanctionist and Wilsonian league

The Political Discourse of Anarchy: A Disciplinary History of International Relations (Albany, NY, 1998); *Thinkers of the Twenty Years' Crisis: Inter-War Idealism Reassessed*, ed. David Long and Peter Wilson (Oxford, 1995).

schemes at all levels. The legalist-sanctionist league, first, was formalistically contractarian. Its method of building international community was through the express consent of states. States, in turn, had to limit their international obligations to those they would actually follow. Put differently, the legalist-sanctionist league premised its own legitimacy on its ability to get results. A rule not backed by reliable sanction seemed an empty aspiration, liable to invite contempt. Legalist-sanctionists therefore sought to prioritize depth of league commitments over breadth. The league was to issue only those demands likely to be given effect. Member states would consent to perform clearly defined obligations to the letter; other members would punish any that broke its promise; and such obligations would be modest enough so self-interested members would be motivated to carry them out when the time for action came. The league would not be a resolution-issuing parliament, a council of diplomats that could issue declarations any time and without meaning to enforce them physically. Rather, it would consist of a judiciary backed by an executive (accompanied by a legislature removed from everyday events, charged only with formulating international legal code). Roosevelt epitomized the legalist-sanctionist ethic in contending that international organization could do good “only on condition that in the first place we do not promise what will not or ought not to be performed.”⁶

To Wilson, legalism and sanctionism had it backward. The formal social contract was a dangerous fiction. Instead, politics emerged and evolved organically. They developed through gradual adaptations to historical circumstance, not through clever arrangements of constitutional commitments. The accretion of habit drove progress whereas law passively codified the results. So international commitments must never step on the toes of a naturally growing international peoplehood. The new century's protagonists had to be parliaments of politicians interpreting the public will, not courts confined to uphold law or great-power enforcers bound to uphold judicial settlements. Wilson's first draft of the Covenant indeed omitted an international court, and although a court was ultimately erected, the parliamentary council and assembly functionally subsumed the court because they could decide legal and nonlegal questions alike. Wilson articulated the essence of his system in announcing that disputes would be submitted “not to arbitration but to discussion by the Executive Council,” which should then seek input from the larger assembly, “because through this instrument we are depending primarily and chiefly upon one great force, and this is the moral force of the public opinion of the world.”⁷

6. “Sound Nationalism and Sound Internationalism,” August 4, 1918, in Theodore Roosevelt, *Roosevelt in the Kansas City Star: War-Time Editorials* (Boston, 1921), 191 (hereafter *Roosevelt Editorials*).

7. Wilson's First Draft of the Covenant, in Ray Stannard Baker, *Woodrow Wilson and World Settlement*, vol. 3 (New York, 1922), 88–93; Address on Unveiling the League Covenant Draft, February 14, 1919, in Lyman Powell and Fred Hodgins, eds., *America and the League of Nations: Addresses in Europe* (Chicago, 1919), 164.

Such ideas struck legalist-sanctionists as ineffectual and dishonest, strategically and morally suspect. The League of Nations seemed destined to raise false hopes, lose credibility, and collapse into violence. The legalist-sanctionist league, by its institutional design, sought to honor what might be called “concrete logic.” This entailed clear-cut obligations likely to be followed or compelled. Every single league commitment had to be performed or else the whole system was a sham. Legalist-sanctionists therefore imagined concrete future scenarios in order to gauge whether an obligation would be performed and thus should be contracted at all. Wilson did not. His League of Nations satisfied “aspirational logic,” which valued broad moral declarations, supposedly expressing the common consciousness of mankind. Should a League commitment go unfulfilled, then so be it, in effect: either this proved, circularly, that the world had been unready for the commitment and that the commitment itself was illegitimate, or the League should carry on and hope its pronouncements would motivate action next time. However far the two leagues might have merged to marry one’s parliament with the other’s judiciary and executive, their underlying logics were irreconcilable.

From 1914 to 1920, Americans chose between these two visions. Yet they hardly comprehended the nature of the choice. Public debate proved sterile, mostly because of the legalist-sanctionists. Differences both principled and political—spanning from significant dissention over the league’s design, to Roosevelt’s and Taft’s personal estrangement, to Root’s eternal caution—got the better of their ideological affinity. And Wilson played a masterful hand, keeping legalist-sanctionists at bay through gestures of support before crushing them through neglect in 1919 when it counted most. After so much posturing, American lawmakers never squarely debated the relative merits of the two visions. Then they abjured the one Wilson left them. The hoped-for postwar peace soon became an interwar illusion. Under the banner of the United Nations, aspirational and parliamentary leagues carried on, the alternative forgotten.

LEGALIST-SANCTIONIST INITIATIVE, 1914–1917

When legalist-sanctionists launched the American debate on international organization in 1914, they hoped to culminate a half-century of transatlantic efforts to build international legal machinery and doctrine. This legalist internationalist movement promoted the codification of legal code and the arbitral and judicial settlement of disputes. At its forefront were second-ranking powers, especially the United States. A breakthrough came when dozens of European and American states convened the Hague conferences of 1899 and 1907. These set up the Permanent Court of Arbitration and endorsed the principle of compulsory arbitration, of all states committing to arbitrate certain classes of disputes. The American legal establishment applauded these developments but sought the establishment of a fully judicial court, which unlike arbitral bodies would decide cases exclusively on the basis of law. Although disagreement thwarted the creation

of such a court at the second Hague Conference, successive presidential administrations used bilateral treaties to weave legal principles and institutions into the fabric of interactions among nations. President Roosevelt and his secretary of state, Root, negotiated a web of twenty-four treaties obligating the arbitration of all legal disputes except those related to “national honor,” “vital interests,” or “independence.” President Taft wished to go further still. He offered universal arbitration treaties, covering all disputes without exception, to any nation that wanted one. Britain and France signed on in 1911. Prefiguring divisions in the league debate, however, the Senate blocked the pacts. Roosevelt and Root judged them too expansive, doubting signatories would keep a pledge to arbitrate matters of “vital interest” or “national honor.” Nevertheless, the growth of law and legalistic institutions appeared to lay the foundation for more. “The next step,” Taft said as 1914 began, “is to include something that really binds somebody in a treaty for future arbitration.”⁸

That August, Germany steamrolled neutral Belgium without pretense of legality. World War I discredited legalism and the Hague system in the eyes of many. Was international law really self-enforcing, as the prewar consensus maintained? The old goal of erecting an international court with moral but not physical sanctions no longer seemed sufficient to bring peace. But where some turned away from law, others reacted to the limitations of law by proposing to strengthen it. The European cataclysm showed Root, Roosevelt, and Taft that law needed force behind it. “The trouble,” Root observed, breaking with his prewar outlook, “is not so much to make treaties which define rights as to prevent the treaties from being violated.”⁹ For the next three years, while Wilson stayed nearly silent, the legalist-sanctionists led the American discussion of postwar international organization.

The league they envisioned would perform three kinds of functions: development of legal code, judicial settlement of disputes, and enforcement of judicial settlement. Roosevelt, Root, and Taft agreed on the first, the need to convene

8. Boyle, *Foundations of World Order*, 25–36, 123–24; Helen Cory, *Compulsory Arbitration of International Disputes* (New York, 1932), 43–49, 54–56, 80–86; Warren Kuehl, *Seeking World Order: The United States and International Organization to 1920* (Nashville, TN, 1969), 30–31, 47, 61, 77, 101–06, 113–14, 138–42; Paolo Coletta, *The Presidency of William Howard Taft* (Lawrence, KS, 1973), 169–71; Leopold, *Elihu Root and the Conservative Tradition*, 128; James Hewes, Jr., “Henry Cabot Lodge and the League of Nations,” *Proceedings of the American Philosophical Society* 114, no. 4 (August 20, 1970): 246–47; William H. Taft, *The United States and Peace* (New York, 1914), 116. On international law in this period, see Martti Koskenniemi, *The Gentle Civilizer of Nations* (Cambridge, England, 2002). For Roosevelt’s views on Taft’s arbitration treaties, see Roosevelt to Lodge, June 12, 1911, in Elting Morison, ed., *The Letters of Theodore Roosevelt*, vol. 7 (Cambridge, MA, 1951–54), 284 (hereafter *Roosevelt Letters*); Roosevelt to Coe Isaac Crawford, June 12, 1911, in *Roosevelt Letters*, vol. 7, 283; Roosevelt to Arthur Hamilton Lee, June 27, 1911, in *Roosevelt Letters*, vol. 7, 296–97; Roosevelt to Cecil Arthur Spring Rice, August 22, 1911, in *Roosevelt Letters*, vol. 7, 333–34; Roosevelt to Arthur Hamilton Lee, September 25, 1911, in *Roosevelt Letters*, vol. 7, 346.

9. Root to George Gibbons, December 8, 1916, box 136, Elihu Root Papers, Library of Congress, Manuscript Division, Washington, DC (hereafter *Root Papers*).

periodic conferences to codify law and devise new codes attuned to changing world conditions. They also preferred to create a genuine court of international law than to rely on existing arbitral bodies. They quarreled, however, over how the league should settle and enforce legal disputes. Four questions were critical. First, given that league commitments had to be deep, how broad should be the classes of disputes that member states would covenant to settle in court? Should matters of “vital interest” and “national honor” be included? Second, who would decide whether a dispute was “justiciable,” meaning subject to judicial settlement: the court or the states? Third, what should states agree to perform and the league to enforce: submission of disputes to court, compliance with rulings, or both? Fourth, should force be used automatically, as a rule, or discretionarily, as a political council chose? To these questions Roosevelt, Root, and Taft each gave his own answer. Their disputes ended up costing dearly, dividing them politically. But in planning a league that based legitimacy upon efficacy, which relied on members to carry out all obligations in full, the details mattered.

As warfare on the Western Front ground to a stalemate, Roosevelt opened the debate over postwar international order. The World League for the Peace of Righteousness—among the more modest of Roosevelt’s suggested appellations—was theorized, outlined, and urged from August to December 1914 (Figure 2). The league would “enforce the decrees of the court,” supplying the “international police power” Roosevelt had already recommended in his Nobel Prize lecture of 1910.¹⁰ In short, the great powers would specify matters they would not submit to court but covenant to submit the rest, abide by court rulings, and punish defiance by force.

The chief novelty was Roosevelt’s emphasis on force, “the first and vital point in any settlement.” Moral sentiment would not reliably motivate action. The logic of domestic order applied internationally: advocating a thoroughly pacifistic international peace was as “ridiculous” as basing “orderliness in Boston upon the absence of any police force.” Without a world government to direct global police, every league member needed to contribute troops to enforce court decrees. Therefore Roosevelt reserved initial membership for militarily capable powers although he hoped the league would later become universal.¹¹

Despite acknowledging “grave difficulties” in the details, Roosevelt maintained that a league was feasible. The trick was to narrow the breadth of members’ commitments so as to maximize their depth. In the covenant, member states would reserve certain classes of disputes from the court’s purview. The

10. “International Peace,” Address before the Nobel Prize Committee, May 5, 1910, in Lawrence F. Abbot, ed., *African and European Addresses* (New York and London, 1910), 82.

11. Roosevelt to Susan Dexter Dalton Cooley, December 2, 1914, in *Roosevelt Letters*, vol. 8, 853; Theodore Roosevelt, “Theodore Roosevelt on Ultimate Causes of War,” *New York Times*, October 11, 1914; Theodore Roosevelt, “Theodore Roosevelt Writes on Helping the Cause of World Peace,” *New York Times*, October 18, 1914.

THEODORE ROOSEVELT ON THE DANGER OF MAKING UNWISE PEACE TREATIES

By Theodore Roosevelt.

In studying the lessons which should be taught the United States by this terrible world-war, it is not necessary for us to try to assume or appropriate the blame. There are plenty of instances of violation of treaties to be credited to almost all the nations engaged on one side or the other. We need not try to pick out why Italy and Japan seemingly committed similar treaties of alliance in diametrically opposite ways; nor need we decide which was justified or whether both were not. It is quite unnecessary to us for our purpose whether the treaties alleged to be violated affect Luxembourg on the one hand or Russia on the other, whether it is the neutrality of China or the neutrality of Belgium that is violated.

Yet, again, we need always to keep in mind that, although it is equally to blush to treaty, it may be even worse needless to make a treaty which can not be kept. Backsliding in making promises is the surest way in which to secure the discredit attaching to the breaking of a promise. A treaty at present represents usually merely promise, not performance; and it is wicked to promise what will not or cannot be performed. Getting good can even here be accomplished by arbitration treaties if they are not all-inclusive, if they deal with subjects on which arbitration can be accepted.

This caution has repeatedly acted in obedience to such treaties; and great good has come from arbitrations in such cases as, for example, the Hague Peace Conference, when the Russian fleet fired on British trawlers during the Russo-Japanese war. But no good whatever has come from treaties that represented a sham; and under existing con-

In the Second of a Series of Articles on the European War He Discusses the Difficult Task of Securing Peace Without the Sacrifice of Righteousness.

not to treat to fortifications nor in any way to be ready or prepared to defend herself against hostile attack, but should endeavor to secure peace by being so ineffective and helpless as not to arouse fear in others. The well-meaning people who write these affidavits and make these speeches ought to understand that though it is a bad thing for a nation to arouse fear, it is an infinitely worse thing to excite contempt; and every soldier or writer or public man who tells us that we ought not to have battlements and that we ought to trust entirely to unblinded foolish alcoholic arbitration treaties and abolition fortifications and not keep prepared, is merely doing his best to bring contempt upon the United States and to insure disaster in the future.

Japan and Korea.

Nor is China the only case in point. Luxembourg is a case point. Korea is a case in point. Korea was utterly ineffective and helpless. It neither took nor was capable of taking the smallest aggressive action against any one. It had no fleet, no warships, no army worthy of the name. It reached no fear and no anger. But it did excite unmeasured contempt and therefore it invited aggression. Under these circumstances Japan had to decide not whether Korea would be hostile to Japan. The alliance of Japan of that possible hostile to Japan. The alliance rendered it impossible for neutral Japanese statesmen to tolerate its being in the possession of a hostile power. As the only alternative to that took possession of it themselves. I do not question that this was a national necessity.

The point I wish to make is, first, the extreme unwise and impolicy of making

in Louvain. But it never for one moment entered the heads of our people to destroy Vera Cruz. In the same way, when we promised freedom to Cuba, we kept our promise and after establishing an orderly Government in Cuba withdrew our army and left her as an independent power, performing an act which, as far as I know, is entirely without parallel in the dealings of stronger with weaker nations.

It has again and again proved exceedingly difficult to get Congress to appropriate money to pay some obligation which under treaty or arbitration or the like has been declared to be owing by us to the citizens of some foreign nation. Often we have announced our intention to make sweeping arbitration treaties or agreements at the very time when by our conduct we were showing that in actual fact we had not the slightest

would not the slightest attention to them in the event of their being involved in any matter where our interests were seriously involved; but it would do us moral harm to break them, even although this were the least evil of two evil alternatives. It is a dreadful thing that at this very moment, with before our eyes such proof of the worthlessness of the neutrality treaties affecting Belgium and Luxem-

Feble Peace Poth.

The truth is that the advocates of world-wide peace, like all reformers, should bear in mind Josh Billings's astute remark that "it is much easier to be a humanitarian dove than a wise serpent." The worthy pacifists have completely forgotten that the Biblical injunction is two-fold and that we are hidden not only to be harmless as doves, but also to be wise as serpents. The fire-pacifists have made only been an exceedingly harmless body as far as obtaining peace is concerned. They have exerted practically no influence in restraining wrong, although they have sometimes had a real and lamentable influence in crippling the forces of right and preventing them from dealing with wrong. An appreciable amount of good work has been done for peace by genuine lovers of peace; but it has not been done by the feeble folk of the peace movement who are so much more numerous and who waste the utter derision of the great powers of the world.

Sincere lovers of peace who are wise have been obliged to face the fact that it is often a very complicated thing to secure peace without the sacrifice of righteousness. Furthermore, they have been obliged to face the fact that generally the only way to sa-



In the same way our action in Santo Domingo, when we took and administered her Customs Houses, represented a substantial and efficient achievement in the cause of international peace which stands high in the intention of applying them with the sweeping universality we promised. In those cases we were usually, although not always, right in our refusal to apply the treaties, or rather the prin-

conceded, because there is no way provided of enforcing the treaty. America can keep at peace and remain neutral only by declining to do what, according to the spirit of the Hague treaty, she would be expected to do in securing peace for Belgium. To make a verbal protest, unbacked by action, would be merely misanthropic. Yet in practice the Hague treaties have proved and will always prove useless while there is no sanction of force behind them.

For the United States to profess "good services" to the various powers entering such a great conflict as the present one accomplishes not one particle of good; to refer them when they mutually complain of wrongs done to a Hague court which is merely a phantasm does less than no good. The Hague treaties accomplish nothing, and ought not to have been treated as unless in such a case as this of Belgium there is willingness to take efficient action under the Hague treaties.

There could be no better illustration of how execution is two-fold and that we are hidden not only to be harmless as doves, but also to be wise as serpents. The fire-pacifists have made only been an exceedingly harmless body as far as obtaining peace is concerned. They have exerted practically no influence in restraining wrong, although they have sometimes had a real and lamentable influence in crippling the forces of right and preventing them from dealing with wrong. An appreciable amount of good work has been done for peace by genuine lovers of peace; but it has not been done by the feeble folk of the peace movement who are so much more numerous and who waste the utter derision of the great powers of the world.

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Figure 2: Theodore Roosevelt proposed a league to put force behind law—while denouncing treaties lacking physical sanctions—in a series of *New York Times* articles on the months-old war in Europe, this one from October 4, 1914.

United States, Roosevelt suggested, should reserve matters concerning territorial integrity, domestic affairs, and immigration and citizenship.¹² Of course, such exceptions would significantly limit the scope of the league's authority. But Roosevelt thought they would make the league effective. States, however spirited their initial promises, were unlikely to obey rulings that impinged on what they most coveted.

Roosevelt had criticized Taft's unlimited arbitration treaties on such grounds. Now he lambasted the Wilson administration's conciliation treaties. Negotiated with twenty nations in 1913 and 1914, they required a nonjudicial conciliation commission to hear any bilateral dispute before war began. Antimilitarist Secretary of State William Jennings Bryan intended them as "cooling off" treaties, easing passions through delay. They entailed no obligation to respect the commission's judgments. They said nothing of enforcement. They did not exactly

12. Surely he also meant to reserve policy under the Monroe Doctrine, as he did in 1918. Theodore Roosevelt, "The International Posse Comitatus," *New York Times*, November 8, 1914; Roosevelt, "Theodore Roosevelt on Ultimate Causes of War."

Harper's Limited Service.

win Roosevelt's esteem. They were, the Bull Moose bellowed, "unspeakably silly and wicked" for making promises "which neither can nor ought to be kept."¹³

Roosevelt perceived his method of reasoning to differ from Bryan's. If Bryan meant his avowed desire to conciliate all disputes before resorting to war, "he should apply it concretely." Conciliate the politically sensitive issue of Japanese immigration, Roosevelt challenged. If Bryan did not (in fact he did not), Bryan was being merely aspirational. Products of aspiration would crumble in practice, degrading trust, precluding true cooperation and progress. To Roosevelt, a nation staked its sacred honor on the pledges it made. So responsible statesmen concluded only those agreements likely to be scrupulously upheld. Doing this required imagining how future scenarios would unfold. In thinking systemically, Roosevelt charged, the Wilson administration was not thinking specifically. Roosevelt had tried to act on his principles as president; his arbitration treaties excluded matters of "national honor," "vital interest," or "independence."¹⁴ Now, by reserving such subjects from the league's ambit, Roosevelt paradoxically constructed the strongest league he could imagine—a league built from the logic of concrete obligations.

Indeed, Roosevelt, a self-identified Progressive, betrayed astonishing confidence in the transformative power of his plan. The league could revolutionize both the conduct of states and the ethics of law. Its creation, he predicted, "will render it far more difficult than at present for a world-war and far [easier] than at present to find workable and practical substitutes even for ordinary war." Roosevelt cast his league as a major step in the long evolution toward a community among states as orderly as the community of citizens within states—a step, in other words, toward world government. Since the end of the Middle Ages, he wrote, states arose, imposed police throughout their territory, and ended warfare among private individuals. The pledge of great powers to enforce court decrees was "the first necessary step," which would "precede the organization of the international force, precisely as in civil life the posse comitatus precedes the creation of an efficient constabulary." Like some contemporaries, Roosevelt held the "juristic theory" of the state. In this view, states were supreme authorities within their territorial community. The international environment became, by extension, a precontractual state of nature whose constituents were independent and isolated, and international law was, as for English jurist John

13. Kuehl, *Seeking World Order*, 159–10; Knock, *To End All Wars*, 21–22; Phillip Jessup, "A Record of the Arbitration Treaties," *Annals of the American Academy of Political and Social Science* 138 (July 1928): 124; Theodore Roosevelt, *Fear God and Take Your Own Part* (New York, 1916), 170.

14. Roosevelt to Hiram Johnson, November 16, 1914, in *Roosevelt Letters*, vol. 8, 846–47; Frederick Marks, *Velvet on Iron: The Diplomacy of Theodore Roosevelt* (Lincoln, NE, 1979), chaps. 2–3; Kuehl, *Seeking World Order*, 113.

Austin, mere moral code rather than authoritative law. Unlike most juristic theorists, however, Roosevelt saw a way forward.¹⁵

As Roosevelt hoped his league would advance the international system beyond *realpolitik* conduct, so he claimed the league could overthrow the ethics that accompanied such conduct. In truth, Roosevelt harbored contradictory attitudes toward the moral standards of international behavior while law remained unenforced. On the one hand, he sometimes spoke as though international law equaled international morality and the absence of forcible sanction did not change the duty of states to follow law. Statesmen should be gentlemen, he held, and gentlemen were men of their word. It was this Victorian Roosevelt who in 1915, before any other major politician, appealed for American intervention in World War I to enforce Belgium's legal rights. America must show "she will keep her promises," Roosevelt insisted. Yet the United States had not explicitly guaranteed Belgian independence; Roosevelt was eager to save "civilization" by forming his league right away.¹⁶

Another side of Roosevelt asserted an Austinian legal positivism and a Hobbesian morality against the Victorian code of honor. "A right without a remedy is *in no real sense* of the word a right at all. In international matters the declaration of a right, or the announcement of a worthy purpose, is not only aimless but is a *just cause for derision*, and may even be mischievous, if force is not put behind the right or the purpose," Roosevelt wrote in October 1914.¹⁷ By this logic, a might-makes-right morality was lamentably proper until a league changed the structure of international politics. Only physical enforcement would make international law binding, morally as well as practically.

If such an interpretation flies in the face of Roosevelt's stark condemnations of amoral doctrines of force, perhaps his inner doubts made the condemnations so vociferous. Roosevelt, after all, took two months to come to the view that German treaty violations warranted a protest from the American government.¹⁸ In espousing the virtues of a legalist-sanctionist league, he preached a course that would render his internal tension irrelevant. A league enforcer would elevate the morality of international law from ambiguity to clarity, aspiration to reality. Might would make right truly right.

Roosevelt expounded on international organization for five months. His attention then turned to exhorting U.S. military preparedness and entry into the

15. Theodore Roosevelt, "Col Theodore Roosevelt Writes on What America Should Learn from the War," *New York Times*, September 27, 1914; Roosevelt to Susan Dexter Dalton Cooley, December 2, 1914, in *Roosevelt Letters*, vol. 8, 853. On juristic theory, see Schmidt, *The Political Discourse of Anarchy*, 78–96.

16. In the Hague conventions of 1907, Britain unequivocally guaranteed Belgian independence but the United States did not. Marks, *Velvet on Iron*, 95–117; Jessup, *Elibu Root*, vol. 2, 321.

17. Roosevelt, "Theodore Roosevelt Writes on Helping the Cause of World Peace" [emphases added].

18. Robert Sellen, "Opposition Leaders in Wartime: The Case of Theodore Roosevelt and World War I," *Midwest Quarterly* 9, no. 3 (April 1968): 229; Roosevelt to Joseph Morrell, January 31, 1917, in *Roosevelt Letters*, vol. 8, 1149.

war. Although one historian claims Roosevelt thereby “recanted his earlier internationalism,” Roosevelt not only revisited his league idea in 1918 but likely saw preparedness and war entry as steps toward the erection of a league. The United States would need a strong military in order to be an effective and influential league member. Further, joining the Entente’s armed defense of Belgian rights would effectively create a “posse comitatus” from which the postwar league could spring.¹⁹ As Roosevelt left the debate he initiated, the legalist-sanctionist league concept proved it held significant appeal.

Taft first rejected the entreaties of peace advocates Theodore Marburg and William Short to form an association to rally around the idea of postwar international organization. As of February 1915, Taft found the pair “entirely impractical.” At last, if dinner with notables such as Harvard President A. Lawrence Lowell did not abolish the whiff of pacifism Taft disliked, it was the tough-minded program they developed.²⁰ Taft thus became the president of the LEP, which for five years encouraged states to covenant to force members to submit all justiciable disputes to court and all nonjusticiable disputes to conciliation (Figure 3).

An elite delegation brought the LEP to life at Philadelphia’s Independence Hall on June 17, 1915. Academics such as Lowell and economist John Bates Clark were there; so were Hague court members, lawyers, financiers, businessmen, journalists, and professional peace activists. They believed their efforts, the *New York Times* reported, “vastly more important and ambitious than anything that has been undertaken hitherto by advocates of international peace.”²¹

The LEP’s proposed league covenant contained four planks. One required the league to summon regular conferences to formulate and codify legal code. The others governed the compulsory settlement of disputes: member states would submit to league organs all disputes arising between them that peaceful negotiation could not resolve first. Specifically, states would submit to court all justiciable questions, including matters of “vital interest” and “honor,” and the court would possess jurisdiction, the authority to decide whether a dispute was justiciable. Second, all nonjusticiable disputes would come before a council of conciliation, an idea that originated with a British study group led by James Bryce, the former ambassador to the United States. Third was enforcement, which, Taft proclaimed, “distinguishes us from all other Peace Societies.” This provision required that member states automatically mete out economic and

19. Cooper, *The Warrior and the Priest*, 301; see Roosevelt to Frederick Scott Oliver, July 22, 1915, in *Roosevelt Letters*, vol. 8, 949.

20. Taft to Mabel Boardman, February 1, 1915, reel 529, William Howard Taft Presidential Papers, Microfilm, Lamont Library, Harvard University, Cambridge, Massachusetts (hereafter *Taft Papers*); Taft to Mabel Boardman, April 12, 1915, reel 530, *Taft Papers*.

21. *League to Enforce Peace: American Branch* (New York, 1915), 12–58; “Taft Heads Move for Peace League,” *New York Times*, May 31, 1915.



Figure 3: The staff of the League to Enforce Peace surrounding the organization's president, William H. Taft, in 1916. Courtesy of Library of Congress, Prints and Photographs Division, photograph by Harris & Ewing, LC-DIG-hec-03413.

military sanctions to any member that went to war without first submitting its dispute to the court or the council.²²

For Taft as for Roosevelt, force was the indispensable element. Taft, like Root, had previously shied from military sanctions; in January 1915 he suggested setting up “the court before we insist on the sheriff.” But Taft quickly and permanently came around once he saw how force could work. The enforcement provision “is the one article of all others that we must insist on,” he repeated. Only the finality of force behind every league commitment could make international organization a serious instrument. And the United States had to pull its weight. Audiences across the country heard Taft announce that America must shed its “traditional policy” of nonentanglement in European politics. “Have we any right,” he declared, “to stay out of a world-

22. LEP Platform, June 17, 1915, in Frank Gerrity and David Burton, eds., *The Collected Works of William Howard Taft: Taft Papers on League of Nations*, vol. 7 (Athens, OH, 2003), 3–4 (hereafter *Taft Works*); Address to the National Educational Association, July 3, 1916, in *Taft Works*, 62; Martin David Dubin, “Toward the Concept of Collective Security: The Bryce Group’s ‘Proposals for the Avoidance of War,’ 1914–1917,” *International Organization* 24, no. 2 (Spring 1970): 296–97, 300–01; Henry Winkler, *The League of Nations Movement in Great Britain, 1914–1919* (New Brunswick, NJ, 1952), 20; Taft to William Short, January 31, 1916, reel 537, *Taft Papers*.

arrangement calculated to make a world-war improbable, because we shall risk having to contribute our share to an international police force to suppress the disturbers of peace?"²³

Despite mirroring the structure of Roosevelt's proposed league, Taft's plan diverged in meaningful respects. Even regarding force, Taft stressed deterrence over deployment. The resort to arms "may never become necessary," he assured the LEP's pacifistic wing—and himself, for if deterrence faltered, the frequent use of force would defeat the purpose of a league for peace.²⁴ To strengthen deterrence, he clarified that sanctions should be automatic rather than discretionary. Most important, the LEP league encompassed a wider range of international disputes than did Roosevelt's cautious model. The LEP league had authority over every dispute, no matter how vital to national interests, and, crucially, gave jurisdiction to the international court. Of course, enlarging the scope of league commitments risked exceeding what member states would initially accept and ultimately perform.

Taking such liberties with concrete logic jeopardized the LEP's efforts to secure endorsements from Root and Roosevelt. On Root's respected word many Republican senators would have acted. Roosevelt, too, enjoyed popularity, especially among progressives and Westerners whom the establishment-friendly, Northeast-based LEP needed. With Root's and Roosevelt's endorsements, internationalist sentiment might have coalesced around a legalist-sanctionist league, expressing a coherent program to Wilson before he negotiated the Covenant. It was not to be. The failure of legalist-sanctionists to unite reflected both personal distaste—Roosevelt and Taft, once close allies, were not on speaking terms after Roosevelt ran for president against Taft in 1912²⁵—and differences in ideas.

Root and Roosevelt advanced two criticisms of the LEP. The first concerned jurisdiction. The LEP, by vesting jurisdiction in the international court, would create a dangerous suprasovereignty, Root objected. If an international court had jurisdiction to declare any matter justiciable, the court might expand the authority states believed they had granted. The league could become tyrannical, confronting member states with the unpalatable choice of acquiescing in injustice or resisting the league. For example, if the court decided that "our right to exclude Orientals [from immigrating to America] is a justiciable question or that our right to maintain the Monroe Doctrine is a justiciable question," America would "break forty treaties rather than submit to such a judgment." Root, like Roosevelt, designed institutions by projecting scenarios. "Nothing can be worse than to make a treaty that you are not going to live up to," Root underscored.

23. Taft to Ulric King, January 17, 1915, reel 528, *Taft Papers*; Taft to William Short, January 31, 1916, reel 537, *Taft Papers*; Address to the Chamber of Commerce of Queens, January 20, 1917, in *Taft Works*, 76.

24. Address at the LEP Convention, June 17, 1915, in *Taft Works*, 52.

25. See William Manners, *TR and Will* (New York, 1969).

Formal relations had to rest on the logic of concrete obligations alone. Taft, for his part, agreed with the principle but applied it differently. He thought reserving jurisdiction with states left a loophole: if two states disagreed as to whether a dispute belonged in court, deadlock would follow. He therefore concluded states should give up "part of their sovereignty" to accept the court's jurisdiction.²⁶

The jurisdictional problem exacerbated a second concern. In the LEP's conception, the league would automatically fight members that initiated hostilities without first submitting the dispute for settlement. Root and Roosevelt preferred that force instead punish defiance of a league ruling. Sanctioning a state simply for initiating hostilities could target the wrong party, they argued. Nations could perpetuate any wrongdoing short of war because the league would be bound to fight any wronged nation that went to war to remove the injury done to it. The LEP "destroys the national right of protective war and substitutes no other protection in its place," Root complained.²⁷

The author of the Roosevelt Corollary to the Monroe Doctrine was even more vehement. Roosevelt noted that the LEP's league would have perversely constrained America's freedom to respond to Germany's destruction of a British passenger ship carrying one hundred and fifty-nine Americans in May 1915. "Your proposal is that if in the future Germany sank another *Lusitania*, and the United States proceeded to instant hostilities, *the League should make war on the United States in the interest of Germany!* Folly can go no further," he steamed. Roosevelt topped Root in more than ardor. He was not ready for states to settle judicially all matters of "vital interest" and "honor." Grievous slights demanded instant war, not Bryan-esque cooling off. "If I were President," Roosevelt wrote, and any nation "murdered our people wholesale on the seas, I would not for one moment bring the matter before any outside tribunal,—any more than I would appeal to some outside tribunal if, when I were walking with my wife, someone slapped her face."²⁸ A self-respecting Roosevelt would strike right back, just as he thought self-respecting states would protect vital interests, whatever their prior agreements to settle such matters in court.

These quarrels over jurisdiction and enforcement revealed a cleavage among legalist-sanctionists. Taft was more willing than Roosevelt and Root to compromise sovereignty and place a wide range of international disputes under league authority. Root gave the LEP a partial endorsement, Roosevelt a belated one, but they never lent the organization their time and enthusiasm. Root's semiap-

26. Root to Lowell, January 14, 1916, box 112, A. Lawrence Lowell Papers, Harvard University Archives, Cambridge, Massachusetts (hereafter *Lowell Papers*); Root to Lowell, August 9, 1915, box 112, *Lowell Papers*; see Lowell to Root, August 16, 1915, box 112, *Lowell Papers*; Taft to Lowell, February 15, 1916, reel 537, *Taft Papers*; Taft to Frank Short, March 27, 1916, reel 538, *Taft Papers*.

27. Root to Lowell, January 14, 1916, box 112, *Lowell Papers*.

28. Roosevelt to Lowell, January 6, 1917, box 40, *Lowell Papers*; Roosevelt to Henry Sturgis Drinker, January 9, 1917, in *Roosevelt Letters*, vol. 8, 1142.

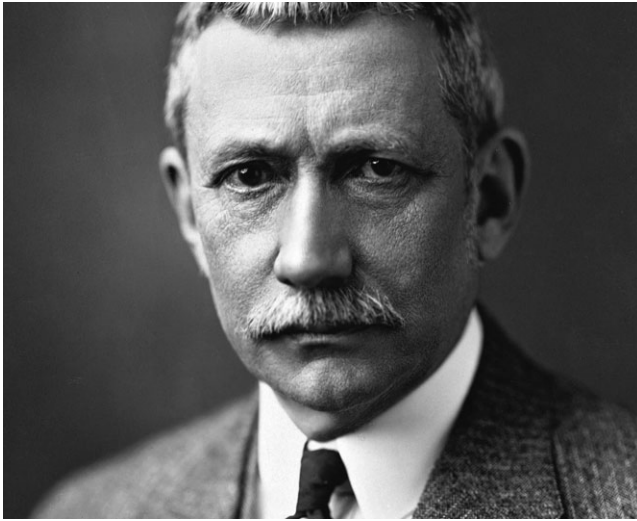


Figure 4: Elihu Root's official portrait as president of the Carnegie Endowment for International Peace, where he searched for a formula for league that would back judicial settlement with armed force. Courtesy of Carnegie Corporation of New York Records, Columbia University Rare Book and Manuscript Library, Series XI. Reprinted with permission.

proval came in February 1916. Expressing “sincere sympathy and good wishes” for the LEP’s “principle,” Root’s letter sufficed for use in promotional materials but did not vault the league idea onto the Senate’s agenda. Roosevelt’s reticence flowed from intellectual reservations no less than animosity with Taft and his perception of pacifism within the LEP. “The test of sincerity and usefulness is acting in the *present*,” Roosevelt wrote Lowell. “If your League meant business it would insist on universal service, and on acting on behalf of Belgium at once.” Not until August 1918, upon resuming his friendship with Taft, did Roosevelt endorse the LEP as a complement to military preparedness.²⁹ Throughout the war, for reasons both principled and personal, the legalist-sanctionists chose to be disunited.

Besides privately criticizing the LEP, Root, a senator until 1915 and president of the Carnegie Endowment for International Peace until 1925, played constructive roles in fashioning a new international order (Figure 4). In private he sketched a league plan that incorporated his criticisms of the LEP and became the blueprint for his later amendments to the League Covenant. Root approached the subject of military enforcement with caution. An international police force, which “everybody is glibly talking about,” carried no small poten-

29. Root to Lowell, February 10, 1916, box 112, *Lowell Papers*; see Root to Lowell, February 19, 1916, Box 112, *Lowell Papers*; Roosevelt to Lowell, January 6, 1917, box 40, *Lowell Papers*; Roosevelt to Taft, August 15, 1918, in *Roosevelt Letters*, vol. 8, 1362.

tial for tyranny and oppression. Lawless force demanded angelic intentions of its wielder. Root was not about to give human nature such credit. Force, however, needed not be lawless. Drawing on discussions with Lowell, Bryce, and peers in the Carnegie Endowment between March 1915 and July 1916, Root designed a postwar international league. International law, first, needed development “as rapidly as possible” through periodic conferences. Further, member states would agree not only to submit all justiciable disputes to an international court and nonjusticiable disputes to a conciliation council but also to abide by the judgments.³⁰

Finally, Root suggested a general obligation for “some kind of sanction for the enforcement of the judgment of the court.” Through 1915 Root envisioned the enforcement only of the court’s decisions, but by July 1916 he included the enforced submission of disputes as well. This final version rejected an LEP-style automatic application of sanctions. Instead, when war loomed, there would be “an immediate diplomatic conference or Congress for discussion and effort to adjust, and suspension of all action on the both sides meantime.” If states violated their agreement to submit disputes, obey judgments, or await the decision of the conference, the league would decide how to compel compliance. Compared with the LEP’s league, therefore, Root’s plan was less ambitious insofar as enforcement was to be determined in a conference, not by rule, and more ambitious in that member states were to covenant to abide by judicial rulings in addition to the submission of disputes. Root was more comfortable with discretionary sanctions perhaps because, unlike Roosevelt, he thought the international milieu had advanced well beyond a pure state of nature (in Root’s terms, “conditions of tribal hostility . . . in which each separate tribe maintained its independence and liberty as best it could by force of arms in a normal relation of hostility to all other tribes”). To him, public assent to law was the ultimate source of social order within states, and “the public opinion of mankind” constituted a powerful sanction of international law. World War I, however, had shown him the insufficiency of public opinion alone. As Root told the American Society for International Law: “Occasionally there is an act the character of which is so clear that mankind forms a judgment upon it readily and promptly, but in most cases it is easy for the wrongdoer to becloud the issue by assertion and argument and to raise a complicated and obscure controversy which confuses the judgment of the world.”³¹

30. Dubin, “Elihu Root and the Advocacy of a League of Nations, 1914–1917,” 446; Root to Lowell, August 9, 1915, box 112, *Lowell Papers*.

31. Root to Lowell, August 9, 1915, box 112, *Lowell Papers*; Root to James Bryce, July 23, 1916, in Dubin, “Elihu Root and the Advocacy of a League of Nations, 1914–1917,” 451; Address on the Declaration of the Rights and Duties of Nations Adopted by the American Institute of International Law, April 27, 1915, box 220, *Root Papers*; Address on the Pan American Cause, May 18, 1907, in Robert Bacon and James Brown Scott, eds., *Latin America and the United States: Addresses by Elihu Root* (Cambridge, MA, 1917), 220; Address on the Outlook for International Law, December 28, 1915, box 221, *Root Papers*; see Zasloff, “Law and the Shaping of American Foreign Policy: From the Gilded Age to the New Era,” esp. 24–26.

Root's actions from 1914 to 1917 have been dismissed as "equivocal," but Root's decision not to agitate publicly for the LEP's or his own league plan flowed from coherent internationalist beliefs. Root worried international society was not quite ready to introduce a league, and in public addresses he attempted to lay the needed groundwork. For one, he thought international law was inadequate: too narrow in scope and too vague in definition. Changes in international politics "have outstripped the growth of international law," Root said, and many rules that existed could not yet be embodied in a written code. Efforts to develop and codify legal code should, then, precede or accompany the founding of a law-centered league. As for laws that were settled, publics were ignorant of their content and importance while, in a democratizing world, publics increasingly influenced foreign policy. Legal societies needed to broaden their appeal and no longer confine their activity to "a few savants who cultivate the mystery of international law."³²

Above all, Root prescribed a change in the way states construed their interests vis-à-vis breaches of international law—at the same time theorizing why league members might perceive an interest in enforcing international law upon others. Until now, when lawless action threatened the peace, international society recognized the immediate parties to the dispute as the only parties having a stake in a resolution. Third parties had no right to object, much less act. But in the true international community of which Root dreamed, legal violations that "threaten the peace and order of the community of nations must be deemed to be a violation of the right of every civilized nation to have the law maintained and a legal injury to every nation." If any state's rights were breached, all other states had cause to protest and act against the offender. Such action, Root said, "would not be an interference in the quarrels of others. It would be an assertion of the protesting nation's own right against the injury done to it by the destruction of the law upon which it relies for its peace and security." Only on this theory could "any league or concert or agreement among nations for the enforcement of peace by arms or otherwise be established."³³ Root was simply applying the theory behind criminal municipal law to international relations, he argued. The state prosecuted matters threatening the safety of the community because such matters affected all; as long as the streets were not lined with instruments of coercion, everyone depended on criminal law for protection.

So far, criminal offenses in international relations were treated like domestic civil disputes, as if they concerned only two private parties. The First Hague

32. Dubin, "Elihu Root and the Advocacy of a League of Nations, 1914–1917," 439; Address at the Joint Meeting of the Subsection on International Law and the American Institute of International Law, December 30, 1915, box 220, *Root Papers*; Address on the Outlook for International Law, December 28, 1915, box 221, *Root Papers*; Address at the Joint Meeting of the Subsection on International Law and the American Institute of International Law, December 30, 1915, box 220, *Root Papers*.

33. Address on the Outlook for International Law, December 28, 1915, box 221, *Root Papers*.

Conference of 1899 made progress that Root cheered. Its convention encouraged third parties to offer “good offices or mediation” to states before and during hostilities. Root interpreted the convention as heralding a “considerable step” toward a criminal-law mentality in international affairs. The signatories recognized “such an independent interest in the prevention of conflict as to be the basis of a right of initiative of other Powers in an effort to bring about a settlement,” Root claimed. As he acknowledged, though, third parties were seen to have no stake in the substance of the dispute. In short, “the rest of the world has in theory and in practice no concern with the enforcement or non-enforcement of the rules.”³⁴

Despite turning war into a crime, Root shrank from recommending true world government. Having conceptualized the problem on analogy to the domestic, he declined to transpose the solution to the international in equal measure. This mismatch meant that submission to court, compliance with rulings, and aggressive warmaking would be interpreted and punished not by a single overarching government but rather by several separate states. Those states would not have identical cultures or interests. Why would they perceive and punish violations in compatible and effective ways? Root did not confront this question. He therefore implicitly assumed a harmony of interests to a degree that, if baldly stated, might have made him balk (though perhaps not); he also assumed reason was scarcely inflected by national culture. Nor did Root say whether the recognition of a right to act against lawbreaking breaches of the peace should precede the creation of a league or whether the creation of a league was the only way to bring about the recognition of this right. Regardless, Root was certain that no league dedicated to enforcing international law could long succeed unless the would-be enforcers perceived flagrant violations to concern their own rights and well-being. States’ notion of self-interest had to be enlightened, just as law had to be developed and publics educated. By advocating these measures, Root contributed to the public movement for a league during the period of legalist-sanctionist initiative.

To what end? With America neutral toward the war, a legalist-sanctionist league never became an urgent question. Prudent skeptics held their tongue or feigned affinity. Even so, the legalist-sanctionists made impressive inroads into elite opinion. The esteem the LEP drew from leaders of both parties suggests the United States might have favored a legalist league at Paris had the wartime president been a Republican or a differently minded Democrat.

The LEP was the largest, most influential pro-league group in America and probably the world. Within four months of its founding, Taft was touring the country, promoting the league in speeches given once or twice per week. *Forbes*

34. Convention for the Pacific Settlement of International Disputes, July 29, 1898, in James Brown Scott, *The Reports to the Hague Conferences of 1899 and 1907* (Oxford, 1917), 33; Address on the Outlook for International Law, December 28, 1915, box 221, *Root Papers*.

magazine in October 1919 estimated Taft's reputation to be "greater today than . . . while he occupied the White House." Even by the end of 1916, the LEP boasted branches in every state except three and some \$240,000 in pledges. On the eve of American entry into World War I, Lowell judged the LEP's progress to be "extraordinary." The only vocal opposition among politicians had come from antimilitarists such as Bryan and Senator William Borah. Many international lawyers, too, opposed forcible sanctions. They still preferred to leave enforcement to "public opinion," highlighting how the LEP had departed from prewar legalism.³⁵

The LEP was so influential that Wilson, despite wishing to defer discussion of the postwar settlement, felt compelled to render his approval. The president spoke at an LEP dinner in May 1916, supporting the idea of a league while artfully dodging comment on specific provisions. Taft and Root also discussed postwar organization with Wilson at two lunches in March and April 1918.³⁶ Wilson himself stayed circumspect about the kind of league he preferred until Covenant drafts left Paris in February 1919.

Meanwhile the Republican presidential nominee endorsed the LEP as the legalistic internationalists dominating his party coalesced around the idea of a league to enforce and develop international law. Charles Evans Hughes lost the White House to Wilson by one of the slimmest electoral margins in history, 277 to 254. Internationalism of a legalistic bent naturally attracted Hughes, the chief justice of the Supreme Court. Hughes, in fact, not only endorsed the LEP but devoted substantial portions of his nomination address to the "organization of peace." He called for an international court, machinery for conciliation, and periodic conferences to formulate law. He even alluded to the desirability of enforcement mechanisms, envisaging "preventive power of a common purpose . . . some practical guarantee of international order."³⁷ With the public still overwhelmingly against entering the war, Hughes might have indicated less than

35. Taft to Theodore Marburg, October 26, 1915, reel 534, *Taft Papers*; quotation taken from James Vivian, Introduction, in James Vivian, ed., *William Howard Taft: Collected Editorials, 1917-1921* (New York, 1990), xxii; Ruhl Bartlett, *The League to Enforce Peace* (Chapel Hill, NC, 1944), 61-62; Lowell to James Bryce, March 13, 1917, box 26, *Lowell Papers*; "World Peace Debate," 1917, in *Taft Works*, 99; William Jennings Bryan and William H. Taft, *World Peace* (New York, 1917); Address to the Chamber of Commerce of Queens, January 20, 1917, in *Taft Works*, 75. For opposition to the LEP by legalists, see Coates, "Transatlantic Advocates," chap. 7, as well as Nicholas Murray Butler, *The Basis of Durable Peace* (New York, 1917), esp. 97-104; David Jayne Hill, *The Rebuilding of Europe: A Survey of Forces and Conditions* (New York, 1917), esp. 192-198; James Brown Scott, "The Organization of International Justice," *Advocate of Peace* 79, no. 1 (1917): 10-22.

36. Bartlett, *The League to Enforce Peace*, 52-55; Henry Pringle, *The Life and Times of William Howard Taft*, vol. 2 (New York, 1939), 939.

37. See S. D. Lovell, *The Presidential Election of 1916* (Carbondale, IL, 1980); Arthur S. Link, *Wilson: The Road to the White House*, vol. 5 (Princeton, NJ, 1947-); Dexter Perkins, *Charles Evans Hughes and American Democratic Statesmanship* (Boston, 1956); quotation taken from Bartlett, *The League to Enforce Peace*, 58-59.

he desired. Indeed, in 1919 Hughes would tell the Senate that the League of Nations Covenant did too little to advance international law.

The maneuverings of Henry Cabot Lodge, the powerful Massachusetts senator, demonstrated both the breadth and the shallowness of politicians' esteem for the LEP between 1915 and 1917. Lodge praised the LEP in passionate but general terms. At the LEP's first annual national assembly, Lodge announced voluntary arbitration had gone as far as it could. "The next step is that which this League proposes," Lodge said, "and that is to put force behind international peace." But Lodge excised an endorsement of the LEP's league plan from the Republican platform of 1916, and after Wilson's election victory, Lodge privately revealed he felt "perfectly dissatisfied" with the LEP. Discussion of the postwar settlement facilitated Wilson's effort to mediate in the war, Lodge estimated. Lodge's earlier encouragement had probably been a façade. By backing the LEP, Lodge bolstered assertive internationalist Northeast Republicans against their more pacifistic Midwestern counterparts; by backing the LEP vaguely, he avoided open dissension between the factions that could impair the Republican candidacy against Wilson.³⁸ Still, Lodge, skeptical but not dismissive of a legalist-sanctionist league, might have been more receptive had the president been other than his nemesis Wilson.

As America entered the war in April 1917, two years of favorable expressions from mainstream internationalists in both parties, and the limiting of open opposition to antimilitarist quarters, seemed to augur well for a legalist-sanctionist league of nations. Just as a consensus was building, however, the initiative slipped. Legalist-sanctionists themselves deferred their efforts to promote postwar international architecture. Their immediate goal became convincing the public to stay in the war until America won. Neither Roosevelt, Root, nor Taft trusted Wilson to fight the war to the bitter end. Supporting the war was "the only step now possible" toward fulfilling the LEP's platform, Taft decided in July.³⁹ The LEP followed Taft's counsel and never regained its legalistic focus.

Wilson, moreover, began to seize the initiative. In June 1916, as the LEP readied a pro-league resolution to be introduced in Congress, Wilson was "emphatic as could be," Taft reported, that no such move occur. Wilson argued a resolution would hand opponents an opportunity to criticize the league. Taft complied, knowing that only the president had the constitutional authority to negotiate treaties. Likewise, Wilson asked the LEP to stop building consensus with British, French, and Italian officials in the summer of 1918, lest the president get boxed out. Taft put up no fight. By the time Wilson dispatched an

38. Address to the LEP, May 26–27, 1916, in *Enforced Peace* (New York, 1916), 165; Bartlett, *The League to Enforce Peace*, 57–58; Widenor, *Henry Cabot Lodge*, 240–48, 256; Lodge to Roosevelt, December 21, 1916, in Widenor, *Henry Cabot Lodge*, 251; Kuehl, *Seeking World Order*, 221–22.

39. Taft to William Short, July 12, 1917, reel 546, *Taft Papers*.

emissary to ensure the LEP's May 1918 convention did not dwell on postwar arrangements, Taft had already christened the "Win the War" convention.⁴⁰

Both by choice and at Wilson's behest, the exponents of a legalist-sanctionist league lost their position atop the national discussion on postwar institutions. They had nonetheless done much in the previous three years to lay the intellectual and political foundations for a league to enforce and develop international law. In the dark days of December 1915, Root could deliver a speech named "The Outlook for International Law" that was not bleak but optimistic. The development of law, Root recalled, was once spurred by the Thirty Years War: "We may hope that there will be again a great new departure to escape destruction by subjecting the nations to the rule of law."⁴¹ To that end the legalist-sanctionists worked as America joined the war and the idea of a league of nations entered the Senate.

CONSTRUCTIVE CRITICISM, 1918–1920

On January 8, 1918, President Wilson rose before a joint session of Congress. His Fourteen Points synthesized an array of changes to diplomatic practice, the last being a "general association of nations . . . for the purpose of affording mutual guarantees of political independence and territorial integrity to great and small states alike." Wilson's program was unquestionably visionary. But international law was peripheral to the vision. The new league was to protect territorial integrity but not to obligate or enforce judicial settlement or to develop legal code. Wilson's sidelining of law had not been easy to detect. Until a draft of the Covenant emerged from the Paris negotiations in February 1919, Wilson provided few specifics about his preferred league. Legalist-sanctionists made their own case, culminating in Root submitting amendments to the Senate and ending with the fatal defeat of the Treaty of Versailles in March 1920. These legalist-sanctionists went beyond criticizing Wilson's League for creating an excessive and ambiguous obligation to go to war under Article X. They also sought to strengthen the authority of the League to enforce and develop international law.

The German Army, by its disastrous spring offensive of 1918, reinvigorated the American debate over postwar order. Some 833 newspaper editorials opined on a postwar league in December 1918, and only twenty were hostile, by the LEP's count. "The restoration of peace will present a great opportunity to restate law, authoritatively, by general consent," predicted Simeon Baldwin,

40. Taft to Theodore Marburg, June 6, 1916, reel 540, *Taft Papers*; Lloyd Ambrosius, *Woodrow Wilson and the American Diplomatic Tradition*, 42; Taft to Joseph Tumulty, March 24, 1918, reel 549, *Taft Papers*.

41. Address on the Outlook for International Law, December 28, 1915, box 221, *Root Papers*.

Connecticut's Democratic ex-governor and judge, in July 1918.⁴² It was a fair prediction. Most talk, so far, was legalistic. As late as December 1918, Lodge remarked, "All the plans which have been put forward tentatively for a league of nations, so far as I know, involve the creation of a court."⁴³

Roosevelt now resumed writing on a legalist-sanctionist league. The clear Republican front-runner for the presidential nomination in 1920, Roosevelt patched up his relations with Taft, citing Taft's support for universal military training. In August he finally endorsed the LEP, albeit, he added, to accompany rather than replace military preparedness. Thanks to Taft's sound concept and well-designed mechanisms for enforcement, he wrote, "we can speak of the League as a practical matter."⁴⁴

His old hang-ups vanished partly because the LEP's league seemed infinitely better than anything Wilsonian. Roosevelt first and foremost sought to counteract what he regarded as the vagueness and utopianism of Wilson's hopes for postwar peace. An international league was desirable, Roosevelt wrote, but it must "not attempt too much and thereby expose the movement to the absolute certainty of ridicule and failure." Roosevelt distinguished "sound internationalism" from a sweet-sounding internationalism that made grandiose promises. In reducing ideals to practice, statesmen had to make only those promises their country would actually fulfill. A worthwhile league would not depend on states to sacrifice their own interest to that of humanity. It would instead create an environment in which self-interested actions redounded to the common good. While setting up a league, "there is no difficulty whatever in prattling cheerfully," Roosevelt noted. "But there will be much difficulty in making it work at all when any serious strain comes." "International duties" had to be performed as "national duties," or they would not be performed at all.⁴⁵

To show how to make progress without attempting too much, Roosevelt expanded on his own league concept. He met remaining questions with conservative answers. Not only would the member states declare matters of "vital interest" to be exempt from the league's purview, but they would retain jurisdiction. They would decide, "as each case arises," whether the covenant required

42. Kuehl, *Seeking World Order*, 291; Simeon Baldwin, "The Membership of a World Tribunal for Promoting Permanent Peace," *American Journal of International Law* 12, no. 3 (July 1918): 454.

43. *Congressional Record*, 65th Cong., 3rd Sess. (December 21, 1918), 728.

44. Roosevelt to Henry Stimson, June 5, 1918, in *Roosevelt Letters*, vol. 8, 1337; Roosevelt to Taft, August 15, 1918, in *Roosevelt Letters*, vol. 8, 1362; "The League to Enforce Peace," December 2, 1918, in *Roosevelt Editorials*, 277.

45. "The League to Enforce Peace," December 2, 1918, in *Roosevelt Editorials*, 277-78; "Sound Nationalism and Sound Internationalism," August 4, 1918, in *Roosevelt Editorials*, 191; see Roosevelt to James Bryce, November 19, 1918, in *Roosevelt Letters*, vol. 8, 1400; "Permanent Preparedness and the League of Nations," October 15, 1918, in *Roosevelt Editorials*, 229-30.

their dispute to be settled in court.⁴⁶ Roosevelt's league might therefore appear to amount to nothing. States were to covenant to take to court any dispute they would later opt to take to court. In practice, though, this modest proposition might not prove empty: withholding obviously justiciable cases could be difficult to justify, especially if league members threatened to compel submission to court. And Roosevelt claimed to want jurisdiction to stay with states only "until some better plan can be devised." To propose ceding jurisdiction to the international court would have compromised Roosevelt's private strategy of speaking from both sides of his mouth, probably to preserve a coalition that would later tolerate a modest legalist-sanctionist league and, most pressingly, frustrate Wilson's plans. As he advocated a league publicly, Roosevelt also assured skeptics like Lodge and former senator Albert Beveridge that his utterances were a mirage. Perhaps Roosevelt would have assented to a creative solution similar to that of Taft's universal arbitration treaties of 1911, which rested jurisdiction in a joint commission composed of six commissioners. Each state could appoint three commissioners, and a vote of any two commissioners could dismiss a dispute as unsuitable for arbitration.⁴⁷ Such an arrangement could constrain states but would enable them to evade the substance of judicial settlement, illustrating the difficulty of attempting to guarantee collective security without creating suprasovereign authority.

In addition, Roosevelt offered several recommendations about the composition and operation of his league. Membership should start with the victorious Allies; the imperial nations should reserve regional spheres of influence from the purview of the court; and the great powers should retain a "guiding voice in the councils" as new members joined. These measures attested to Roosevelt's conviction that the league would be effective "only if all its members are willing to make war on the same offenders." They also presumed and encouraged a continued activist disposition in American foreign relations. The protection of imperial spheres of influence preserved the Monroe Doctrine, foreclosing the possibility that the league could encroach upon American freedom of action in the Western Hemisphere. For Britain, it shielded the empire, whose efforts to extend "civilization" to backwards peoples Roosevelt unflinchingly adored, apparently finding no need for a league to oversee European colonial administration in the manner of the mandates system. William Widenor interprets Roosevelt's advocacy of a postwar league to be "as much a means of getting the United States and England to assume the proper international posture as an end

46. Roosevelt's league still differed from the LEP's on the topics of jurisdiction and "vital interests." Roosevelt dealt with these discrepancies by ignoring jurisdiction and pretending the LEP reserved matters of "vital interests" from judicial settlement. "The League of Nations," November 17, 1918, in *Roosevelt Editorials*, 263; "The League to Enforce Peace," December 2, 1918, in *Roosevelt Editorials*, 279.

47. "The League to Enforce Peace," December 2, 1918, in *Roosevelt Editorials*, 279; Roosevelt to Albert Beveridge, October 31, 1918, in *Roosevelt Letters*, vol. 8, 1385; Kuehl, *Seeking World Order*, 139–42; Cory, *Compulsory Arbitration*, 86.

in itself."⁴⁸ This view perhaps exaggerates but captures a principal concern in Roosevelt's mind.

Theodore Roosevelt, age sixty, died in his sleep on January 6, 1919. Heart failure claimed the life of the odds-on favorite for the Republican nomination for president.⁴⁹ Lodge quickly claimed Roosevelt's mantle, but Lodge was less interested in reconfiguring international society. After the armistice of November 1918, he was ready to say so. The soon-to-be Senate majority leader and Foreign Relations Committee chairman turned against the LEP, rhetorical questions thinly veiling his antagonism. "It is easy to talk about a league of nations and the beauty and the necessity of peace," Lodge said, "but the hard practical demand is, Are you ready to put your soldiers and your sailors at the disposition of other nations?" Lodge argued there was an unavoidable tradeoff between international organization and state sovereignty, much as he contended in later debates over Article X of the Covenant. An effective league would have to control an international army and navy, so it must be able to order America to fight. Otherwise the league would be ineffectual. Lodge also asked who would have jurisdiction to decide justiciability and how the United States could retain its power to decide policy toward immigration and the Monroe Doctrine.⁵⁰

Although he consorted with legalist-sanctionists, Lodge was not one of them. By late 1918, he said the "sole purpose" of the postwar settlement should be to disable Germany from instigating future conquests.⁵¹ Nevertheless, Lodge's extreme distrust of Wilson's ambitions colored everything. If Hughes had been president, or Roosevelt after 1920, perhaps Lodge would have tolerated a cautious legalist-sanctionist league that reserved jurisdiction with member states and lacked authority over matters of "vital interest." As it was, Lodge posed a challenge to legalist-sanctionists that was both substantive and tactical, and in both cases formidable.

On February 14, 1919, the first draft of the League of Nations Covenant emerged from Paris. Discussion turned acrimonious the next month, once Lodge mobilized thirty-nine Republican senators to sign a resolution deeming the Covenant unfit for ratification. Thereafter the main argument pitted pro-

48. "The League of Nations," January 13, 1919, in *Roosevelt Editorials*, 294; "The League of Nations," November 17, 1918, in *Roosevelt Editorials*, 263; "War Aims and Peace Proposals," October 12, 1918, in *Roosevelt Editorials*, 228; Widenor, *Henry Cabot Lodge*, 223. For Roosevelt's views on empire and the civilizing mission, see Frank Ninkovich, "Theodore Roosevelt: Civilization as Ideology," *Diplomatic History* 10, no. 3 (Summer 1986): 228; Stephen Wertheim, "Reluctant Liberator: Theodore Roosevelt's Philosophy of Self-Government and Preparation for Philippine Independence," *Presidential Studies Quarterly* 39, no. 3 (September 2009): 494-518.

49. Cooper, *Breaking the Heart*, 43.

50. *Congressional Record*, 65th Cong., 3rd Sess. (December 21, 1918), 728.

51. Lodge to Albert Beveridge, December 3, 1918, reel 48, Henry Cabot Lodge Papers, Massachusetts Historical Society, Boston, Massachusetts (hereafter *Lodge Papers*); Lodge to Arthur Balfour, November 25, 1918, reel 48, *Lodge Papers*; *Congressional Record*, 65th Cong., 2nd Sess. (August 23, 1918), 9394.



Figure 5: A watercolor portrait of Elihu Root painted by the famed illustrator Edward Penfield and published as the cover of *Collier's* magazine on November 13, 1915. Courtesy of Library of Congress, Prints and Photographs Division, LC-USZC4-2921.

League forces against those who wanted to weaken and delay the League. Most contentious was Article X, which enjoined member states to preserve the independence and territorial integrity of all members against external aggression. Lodge and his followers sought first to dilute the article and then to strike it altogether.

Against this backdrop, Republican party chairman Will Hays summoned Elihu Root. "Mr. Root," Hays began, "fifty or sixty million Republicans are in a fluid condition on this subject. . . . I think the time has come for you to speak." They decided Root would write an open letter, to be published in five thousand newspapers and mailed to one million persons. This letter, dated March 29 and forewarning of its "perhaps inordinate length," distilled Root's years of contemplation on international organization into amendments to the Covenant. To be sure, Root joined criticism of the League for going too far. He proposed a five-year limit on Article X. But his focus was that the League did not go far enough.⁵²

Without mentioning the Massachusetts senator by name, Root gave his answer to Lodge's challenge: international organization and state sovereignty could coexist. Nations could agree to submit all justiciable disputes to an inter-

52. Will Hays to Root, March 24, 1919, box 137, *Root Papers*; Jessup, *Elihu Root*, vol. 2, 389; Root to Will Hays, March 29, 1919, box 137, *Root Papers*.

national court and abide by the ruling. Jurisdiction could rest with the court, but the league council could decide on enforcement measures case by case, not automatically, and states could determine their own military obligation in each case. The League of Nations plus Root's legalist-sanctionist amendments amounted to precisely this scheme.

Under Root's first amendment, member states would agree to submit all justiciable disputes to an international court and obey the ruling. This obligation was comprehensive, including matters affecting "vital interest" and "honor." Root also granted jurisdiction to the international court. Such a provision had provoked Root's consternation with the LEP, but two innovations apparently allowed Root to overcome his fears for state sovereignty. First, Root's amendment defined "justiciable." Justiciability, Root boasted, was now "carefully defined, so as to exclude all questions of policy, and to describe the same kind of questions the Supreme Court of the United States has been deciding for more than a century."⁵³ Second, enforcement would happen not with LEP-esque automaticity but at the discretion of the League Council.⁵⁴ If Root's court tyrannically expanded its authority, the Council could check the court by withholding enforcement, especially because every member of the Council wielded a veto. The cost, of course, was that enforcement might never come. Striving for collective security without suprasovereignty, Root had to compromise both: he compromised collective security by making enforcement discretionary, and he compromised sovereignty by locating jurisdiction in the international court.

Root next addressed his concern for the viability of international law. Under his second amendment, the powers would convene two to five years after signing the Covenant. There they would review the condition of international law before authoritatively stating "the principles and rules thereof."⁵⁵ Future conferences would meet at regular intervals to update this codified law. Root went on to propound four more amendments, but these first two—aiming to obligate the use of an international court and codify international law—constituted a bold legalist-sanctionist program.

These legalist-sanctionist amendments received Root's unmistakable emphasis, above his criticisms of Wilsonian provisions such as Article X.⁵⁶ The League of Nations would only nip at the margins of international politics, Root argued, because it concentrated on nonlegal matters of "policy." Matters

53. Borrowing the widely circulated definition that originated in Bryce group, Root defined justiciable disputes to be "disputes as to the interpretation of a treaty, as to any question of international law, as to the existence of any fact which, if established, would constitute a breach of any international obligation." David Hunter Miller, *The Drafting of the Covenant*, vol. 1 (New York, 1928), 378; Root to Will Hays, March 29, 1919, box 137, *Root Papers*.

54. This point is inferred; Root's letter did not explicitly mention the prospect of enforcement by the Council, difficult to broach in light of the Senate's revolt against Article X.

55. Root to Will Hays, March 29, 1919, box 137, *Root Papers*.

56. Historians of Root, unlike their subject, have dwelled on the parts of Root's letter dealing with Wilsonian aspects. Jessup, *Elibu Root*, vol. 2, 390–94; Leopold, *Elibu Root and the Conservative Tradition*, 136.

of legal right, by contrast, “cover by far the greater number of questions upon which controversies between nations arise.” On such issues America “ought to be willing to stand on precisely the same footing with all other nations” and thus settle disputes judicially. The history of American diplomacy, which for “more than half a century” had been “urging upon the world the settlement of all [legal] questions by arbitration,” gave Root confidence that the country would countenance constraints on its freedom of action.

The League conceived in Paris was not the kind Root trusted to keep the peace. The draft Covenant (like the final version) did not obligate the submission of legal disputes to court. Article XIII mentioned arbitration but required it only for disputes both parties “recognize to be suitable for submission.” Hence it seemed to Root an empty requirement, “merely an agreement to arbitrate when the parties choose to arbitrate” and “therefore no agreement at all.” In practice, Root foresaw, the League would adjudicate legal questions improperly, through nonarbitral and nonjudicial channels. In Article XV, member states agreed to submit to the Council all war-threatening disputes not submitted to arbitration, and the Council could issue a recommendation itself or pass the dispute to the League Assembly. Thus the Council and Assembly would often decide justiciable disputes, and they were composed of state delegates duty-bound to represent their national interests. Root thought the main decision makers should instead be professional judges, appointed by member states but trained and sworn to uphold the law. But the Covenant called merely for the formulation of plans to establish a permanent court, and it did not require the use of a court once established. Root’s depressing conclusion was that “all questions of right are relegated to the investigation and recommendation of a political body to be determined as matters of expediency.”

All things considered, the League of Nations “practically abandons all effort to promote or maintain anything like a system of international law,” Root summed up. The Covenant “puts the whole subject of arbitration back where it was twenty-five years ago. Instead of perfecting and putting teeth into the system of arbitration provided for by the Hague Conventions, it throws those conventions upon the scrap heap.”⁵⁷ Any belief that the Covenant would recast international politics to realize perpetual peace was “a great mistake and leads to mischievous misunderstanding.”⁵⁸

Fervent words, but Root halted his campaign to strengthen the League’s legalism three months after he launched it. In a public letter to Lodge, Root laid out the new Republican strategy: reservations, which would not require a renegotiation of the treaty.⁵⁹ Root proposed three reservations, none dealing with international law. Why did Root retreat? His new letter still expressed a desire for legalist-sanctionist amendments, complaining that the Covenant, now the

57. Root to Will Hays, March 29, 1919, box 137, *Root Papers*.

58. Root to Moorfield Storey, March 20, 1919, box 137, *Root Papers*.

59. For the political context of Root’s letter, see Cooper, *Breaking the Heart*, 105.

revised version of April 28, did nothing to strengthen judicial settlement or develop international law. He even encouraged the Senate to pass a resolution requesting the president to open international negotiations for such purposes. In private correspondence, too, he continued to bemoan the League's weakness regarding international law.⁶⁰ The motive for Root's retreat was less intellectual than tactical.

Lowell had praised Root's legalist amendments for making the Covenant "thoroughly satisfactory," and Bryce, in Britain, heralded the amendments as "most important and indeed necessary." Root, however, had inspired little enthusiasm outside of committed legalists.⁶¹ The president proved unreceptive, and Root's proposals fell flat in a Senate gravely troubled that Wilson's plan for international organization was too extreme.

The American delegation in Paris, first, received Root's legalist-sanctionist amendments coldly. Already Wilson had fought against the Covenant's merely mentioning an international court. After Britain and France pushed hard, Wilson relented, permitting the minimal provisions Root would find insufficient. That was as far as the president would bend. French delegate Léon Bourgeois, president of the legalist-sanctionist French Association for the Society of Nations, thundered: "I consider it a serious matter to ignore completely, as if nothing had ever been done up to the present time for the organization of international law, what has been done and elaborated at the Hague in 1899 and 1907." But for Wilson the Hague system was an unmitigated failure. In the summer of 1918, Wilson had deleted provisions for an international court from adviser Colonel Edward House's first covenant proposal. He gave no explanation, and House thought Wilson ignorant of major issues pertaining to judicial settlement such as the distinction between justiciable and non-justiciable questions.⁶²

Root probably held higher hopes for the Senate. Throughout the League debate, Root frequently corresponded with or advised Republicans Lodge, Frank Brandegee, Frank Kellogg, Irvine Lenroot, and Charles McNary.⁶³ Nevertheless, the legalist-sanctionist agenda was never discussed widely in the Senate chamber. Without the president sending the Senate a plan to enforce and develop international law—and with Wilson submitting a treaty that struck

60. Leopold, *Elihu Root and the Conservative Tradition*, 138; Root to Lodge, June 19, 1919, box 161, *Root Papers*; Root to George Gray, December 1, 1919, and Root to Margaret Blaine Damrosch, December 2, 1919, box 137, *Root Papers*.

61. Lowell to Root, April 2, 1919, and James Bryce to Root, June 6, 1919, box 137, *Root Papers*.

62. Root to Frank Polk, March 26, 1919, box 137, *Root Papers*; Miller, *The Drafting of the Covenant*, vol. 1, 73, 175, 261, 377–79; Kuehl, *Seeking World Order*, 261–62, 278; Miller, *The Drafting of the Covenant*, vol. 1, 379–80, 404. See "Appeal to Form a French Association for the Society of Nations," September 1918, in Theodore Marburg, *Development of the League of Nations Idea*, vol. 2 (New York, 1932), 824.

63. Jessup, *Elihu Root*, vol. 2, 397.

many senators as too expansive—a legalist-sanctionist league was less rejected than ignored.

The trend of silence had notable exceptions. Positive statements by several senators, amidst efforts to weaken Wilsonian aspects of the League, raise the prospect that the Senate might have endorsed a legalist-sanctionist league if one had been negotiated at Paris. Supportive senators were mostly mild-reservationist Republicans, who sincerely desired the ratification of the Covenant but insisted on modifications that would not force a renegotiation of the treaty.

Frederick Hale, a Maine Republican and former lawyer, introduced a legalist amendment to anti-League Senator Philander Knox's resolution to separate the Covenant from the peace treaty. Hale's amendment struck Rootian chords in calling for development of international law, judicial settlement of legal disputes, and arbitral settlement of nonlegal disputes. But his legalist agitation was not ardent. Hale's foremost concerns were to protect American sovereignty and restrict the scope of the country's international commitments. The Knox resolution was indefinitely postponed on July 1, one week after Hale proposed to amend it.⁶⁴

At the promptings of Root and Hale, Hughes declared strong support for legalist-sanctionist additions to the League. In a public letter of July 24, Hughes explained the "plain need for a league of nations" to develop international law and maintain machinery for judicial settlement, conciliation, and conference. While urging the elimination of Article X, Hughes also regretted that the League was not stronger—that "suitable steps have not been taken for the formulation of international legal principles and to secure judicial determinations of international disputes by impartial tribunals, and that the hope of the world in the determination of disputes has been made to rest so largely upon the decision of bodies likely to be controlled by considerations of expediency."⁶⁵ Hughes' words were idealistic and constructive. They also carried futility. Hughes expressed disappointment rather than summoned action. There was no practical vessel for legalist-sanctionist sentiments, nor did Hughes try to create one.

Additionally, mild-reservationist Republicans Frank Kellogg and Porter McCumber conceived of the League of Nations in a legalistic frame of mind. Even Lodge was taken aback at Wilson's abandonment of international law and institutions. He griped to Beveridge: "The court has almost disappeared; international law, I think, is hardly mentioned; and the thing has turned into a plain political alliance." The Covenant did not approach "what many of us had in

64. Herbert Margulies, *The Mild Reservationists and the League of Nations Controversy in the Senate* (Columbia, MO, 1989), 34, 38; *Congressional Record*, 66th Cong., 1st Sess. (June 23, 1919), 1551; *Congressional Record*, 65th Cong., 3rd Sess. (February 3, 1919), 2598–99.

65. Cooper, *Breaking the Heart*, 131; Charles Evans Hughes to Frederick Hale, July 25, 1919, in *Congressional Record*, 66th Cong., 1st Sess. (July 25, 1919), 3302.

mind when we talked of League of Peace where international law was to be developed and the great feature was to be a strong international court to interpret and lay down the law and behind which the nations were to stand.”⁶⁶

The Republican platform of 1920 testified to the breadth of legalism’s appeal among the party. Root drafted the plank on the League of Nations. Before lightly criticizing the League, the platform called for something more: an international association “based upon international justice.” This association, albeit vaguely outlined, was to develop law and settle disputes in impartial courts. Furthermore, the platform condemned the Covenant for ignoring “the universal sentiment of America for generations past in favor of international law and arbitration” and trusting the future to “mere expediency and negotiation.”⁶⁷

Senate support for some form of legalist-sanctionism was, then, substantial, particularly among mild reservationists, on whom the fate of the League Covenant rested. But the larger story was one of silence. The legalist-sanctionist alternative never struck senators as a burning issue. By the time Root proposed legalist amendments, the irreconcilables had started to form a bloc. Article X troubled many, including Root, and spoiled any appetite for further commitments. “You will probably be unable to do anything now about the system of arbitration and the development of international law,” Root conceded to Lodge in June 1919.⁶⁸ The Senate clearly lacked the overwhelming determination needed to impose stronger treaty provisions on an unsympathetic president.

Responsibility for the Senate’s passivity lay not only with the caution of Root and like-minded senators. Wilson’s insistence on full ratification starting in June 1919—reservations equaled outright rejection, the president declared—rendered major changes more difficult to promote. Importantly, too, Taft and the LEP, formerly the most vocal proponents of a legalist-sanctionist league, muted their legalism just as the debate entered the Senate. Although Taft and Lowell lobbied Wilson to provide for an international court empowered with jurisdiction and economic and military sanctions, the Covenant excited Taft nonetheless. Taft viewed League as an imperfect step forward for international law. The League would, he predicted, eventually convene conferences to codify international law (and so it did). He even loved Article X, considering it “one of the strongest parts of the League,” though unlike Wilson he interpreted the article as imposing an absolute legal obligation upon member states to wage war. Through the Senate debate, the LEP supported mild reservations, but its purpose was always to find a political formula favorable to ratification, not to

66. Margulies, *The Mild Reservationists*, 15, 19–20; Cooper, *Breaking the Heart*, 94–95; *Congressional Record*, 66th Cong., 1st Sess. (August 7, 1919), 3689; *Congressional Record*, 65th Cong., 3rd Sess. (March 3, 1919), 4874–75; Lodge to Albert Beveridge, March 21, 1919, reel 54, *Lodge Papers*.

67. Jessup, *Elihu Root*, vol. 2, 410; George Hart, *Official Report of the Proceedings of the Seventeenth Republican National Convention* (New York, 1920), 97.

68. Cooper, *Breaking the Heart*, 81–83; Root to Lodge, June 19, 1919, box 161, *Root Papers*.

change the principles of the League of Nations itself.⁶⁹ Once more, legalist-sanctionists similar in ideals were disunited in politics.

What would have happened otherwise, had the LEP used its organizational power to promote legalist-sanctionist additions, is an intriguing proposition. The LEP boasted a 300,000-person membership as of May 1919. By the end of the League debate, the LEP had raised almost \$1 million in citizens' contributions, and Taft spoke in the Midwest and South almost daily. Then again, the LEP gained popularity among Democrats as well as Republicans partly by avoiding antagonism with the White House. After merging with the unlegalistic League of Free Nations Association in the summer of 1918, it expanded its ranks but diluted its legalist-sanctionism. A new LEP platform, updated in November, added a bevy of vague goals such as "the liberty, progress, and fair economic opportunity of all nations" and struck the provision for the automatic use of force to compel judicial settlement. Given that the LEP suffered nearly fatal dissent following the unintended publication of Taft's mild reservations of July 1919, an effort to appeal legalist amendments might not have gotten far.⁷⁰

THE WILSONIAN SPIRIT

An alliance between Wilson and Taft was possible because a Wilsonian parliament and a legalist-sanctionist judiciary and executive were institutionally compatible. Deep philosophical differences, however, underlay these two internationalisms. To the legalist-sanctionists, international organization should deliver collective security through clear-cut international commitments—commitments as fixed in content and as obligatory to perform as possible. Legalist-sanctionists thus criticized Wilson's League for leaving decisions to expedience, to the whims of a political council. Such expedience was precisely Wilson's aim.

Inspired by historicists such as Edmund Burke, Walter Bagehot, and, less directly, Hegel, Wilson had long worried the American system of government, with its formal Constitution and natural rights-enshrining Declaration of Independence, struck his countrymen as an "artificial structure resting upon contract only." "Our national life has been made to seem the manufacture of lawyers," Wilson complained. The Constitution merely encased what truly mattered: the "deep reality of national character," the "heartblood of one people," who should feel free to discard and recreate the Constitution at will. Wilson brought the same assumptions to the construction of a world polity. His organicist and

69. Leopold, *Elihu Root and the Conservative Tradition*, 139; Bartlett, *The League to Enforce Peace*, 118; Taft to Lucius Beers, April 9, 1919, reel 556, *Taft Papers*; Taft to Charles Strong, April 8, 1919, reel 551, *Taft Papers*; Taft to Charles Strong, April 8, 1919, reel 551, *Taft Papers*; see Bartlett, *The League to Enforce Peace*, 121–72.

70. Cooper, *Breaking the Heart*, 27, 113–15; Bartlett, *The League to Enforce Peace*, v, 111–12, 128, 145–48; Frederick Hicks, *William Howard Taft: Yale Professor of Law & New Haven Citizen* (New Haven, CT, 1945), 84–85; Revised LEP Platform, November 23, 1918, in *Taft Works*, 5–6.

evolutionary understanding of political development demanded that the League be an anti-institutional institution—never too fixed, constantly remolding itself around the vital forces of society, which were the vital forces of history. As Wilson told the peace conference, the League “is not a strait-jacket, but a vehicle of life. A living thing is born, and we must see to it that the clothes we put upon it do not hamper it—a vehicle of power, but a vehicle in which power may be varied at the discretion of those who exercise it and in accordance with the changing circumstances of the time.”⁷¹

Wilson’s preference for political councils also jibed with his determination, nurtured by his quintessentially American rejection of European power politics, that the international realm needed radical transformation. If league commitments were limited to what states would already specifically agree to and likely perform, how would the world transcend its corrupted condition? In this way, although Wilson intended the violation of League obligations no more than the legalist-sanctionists did, his own logic decisively privileged the breadth of League obligations over depth. It was wrong to judge the feasibility of international commitments by imagining concrete future scenarios. This assumed historical development was static, whereas the way states acted today might not be the way they would act later. Instead, the enlightened statesmen who designed the League and sat on its councils should divine the movement of history and create obligations that would be fulfilled under changed conditions—new conditions in which, as Wilson put it, “national purposes have fallen more and more into the background and the common purpose of enlightened mankind has taken their place.” Wilson thus enlisted organicism in his transformational mission. If organicist theory might seem conservative—Burke, the father of British conservatism, being its exponent and Wilson’s professed hero—Wilson made it progressive. “Law in a moving, vital society grows old, obsolete, impossible, item by item,” he believed.⁷² Society advanced. Law lamely ratified.

On learning that American legal experts at Paris had started to draft the Covenant, Wilson jeered: “Who authorized them to do this? I don’t want lawyers drafting this treaty.”⁷³ Wilson’s taunt was inspired by more than a facile disdain for lawyers rooted in his own unhappy stint practicing law, as one

71. “The Modern Democratic State,” December 1885, in Arthur S. Link, ed., *The Papers of Woodrow Wilson*, vol. 5 (Princeton, NJ, 1966–94), 68–69 (hereafter *Wilson Papers*); Address on Unveiling the League Covenant Draft, February 14, 1919, in Lyman Powell and Fred Hodgins, eds., *America and the League of Nations: Addresses in Europe* (Chicago, 1919), 165. For Wilson’s ideas of political evolution, see John Thompson, “Woodrow Wilson and a World Governed by Evolving Law,” *Journal of Policy History* 20, no. 1 (2008): 113–25; Niels Thorsen, *The Political Thought of Woodrow Wilson, 1875–1910* (Princeton, NJ, 1988), 89–116.

72. Address at the Metropolitan Opera House, September 27, 1918, in *Wilson Papers*, vol. 5, 131; “The Law and the Facts,” Presidential Address at the Seventh Annual Meeting of the American Political Science Association, December 27, 1910, in *Wilson Papers*, vol. 22, 263.

73. Quotation taken from Patterson, “The United States and the Origins of the World Court,” 293.

historian has speculated.⁷⁴ It was out of settled intellectual conviction that Wilson designed the League of Nations to center on the expedient proclamations of political councils, not on legal rulings backed by automatic sanctions.

Of that much Wilson was certain. But in translating his organicist ideals—conceived in a tautly nationalist frame—into international practice, Wilson faced an intractable problem. For what kind of league obligations were the world's peoples “organically” ready? Who could say? Wilson often purported to, casting his international program as the condensation of the will of mankind. Yet the contradiction of a bottom-up organicist manufacturing international machinery perhaps explains why Wilson spent little time formulating detailed designs for the League until the peace conference. There he largely accepted British proposals, also promoting a flexible version of Article X's promise of political independence and territorial integrity.⁷⁵ For Wilson wanted one thing most of all: that the League stay plastic enough to superintend the growth of the world's common consciousness.

Accordingly, Wilson's League comprised looser kinds of commitments than those of the legalist-sanctionist league—even in theory. Wilson called them “moral obligations.” Their legitimacy was unmoored from League's ability to enforce them, and their importance, above that of legal obligations, became explicit in Wilson's famous defense of Article X. Before the Senate Foreign Relations Committee in August 1919, Wilson explained that the guarantee of political independence and territorial integrity was “a moral, not a legal obligation,” “binding in conscience only, not in law.” This moral obligation was “very grave and solemn” yet left “our Congress absolutely free to put its own interpretation upon it in all cases that call for action.” Pressed as to Article X's value, Wilson replied, “Now a moral obligation is of course superior to a legal obligation, and, if I may say so, has a greater binding force.”⁷⁶ Wilson conceived of Article X as less a legal contract than a declaration of moral intent. Its “binding force” rested solely in conscience. Whereas for legalist-sanctionists efficacy was

74. *Ibid.*, 291. Wilson's suspicion of legal formalism may have been reinforced by progressives' concerns with the domestic power of the judiciary, which frequently reined in the regulatory authority of state and federal government.

75. Wilson's initial proposal for Article X permitted the League to approve continual territorial adjustments, but this feature was rejected at the peace conference. Erez Manela, “A Man Ahead of His Time?” *International Journal* 60, no. 4 (Autumn 2005): 1119–20. For the British influence on Wilson and the Covenant, see George Curry, “Woodrow Wilson, Jan Smuts and the Versailles Settlement,” *American Historical Review* 66, no. 4 (July 1961): 968–86; George Egerton, *Great Britain and the Creation of the League of Nations* (Chapel Hill, NC, 1978); Mark Mazower, *No Enchanted Palace: The End of Empire and the Ideological Origins of the United Nations* (Princeton, NJ, 2009), esp. 42–45.

76. *Congressional Record*, 66th Cong., 1st Sess. (August 20, 1919), 4014; *Congressional Record*, “Peace Treaty Hearings,” Sen. Doc. 106, 66th Cong., 1st Sess. (August 19, 1919), 500. These statements cohered with Wilson's thought throughout the League debate. See Lloyd Ambrosius, *Wilsonianism: Woodrow Wilson and His Legacy in American Foreign Relations* (New York, 2002), 61–64; John Chalmers Vinson, *Referendum for Isolation* (Athens, GA, 1961), 108.

a prerequisite for legitimacy, Wilson grounded his League's legitimacy in its supposed correspondence with common consciousness ("public opinion" Wilson called it). In effect, the League assumed its own legitimacy and hoped this legitimacy would motivate compliance.

To legalist-sanctionists, Wilson spoke nonsense. There could hardly be a moral obligation without a legal one. A treaty pledge had the status of law. Breaking the pledge broke the law. Article X bound states either absolutely or not at all. "The faith of treaties requires that the thing agreed to shall be done because it has been agreed to," Root wrote. "Otherwise, all treaties are 'scraps of paper'"—the epithet with which Germany, on violating Belgium's neutrality, dismissed international law. Root, indeed, assailed Wilson's position as a "slightly disguised" restatement of German lawlessness. Because mere moral aspiration was alien to Root's way of thinking, Root viewed Article X as a legal obligation Wilson was obfuscating through "curious and childish casuistry." By June 1919 Root favored eliminating Article X altogether, largely on the grounds that the United States would not meet its commitment. Taft supported Article X but on his own terms, as a legal obligation. The United States would honor its word, Taft believed, though he expected the deterrent power of Article X to preclude a resort to force.⁷⁷

Wilson's advocacy of "self-determination" for civilized peoples demonstrated another aspirational dimension of his vision. His broad, vague manner of speaking left his listeners with widely divergent interpretations. Most dramatically, leaders across the colonial world seized on his language to demand immediate independence from empire, even though Wilson, a liberal imperialist, thought most of the colonial world required generations of tutelage first. Roosevelt, Root, and Taft criticized Wilson's promotion of self-determination because the principle would not be applied everywhere or reduced to enforceable rules. Wilson was issuing "impossible promises for self-determination for everybody in the future," Roosevelt scoffed, sarcastically inviting the delegates in Paris to "ask for some rule which will make the hypocrisies about cases like that of Santo Domingo and Haiti," then under U.S. occupation, "a little less blatant." Taft inveighed against the principle of self-determination because the question inevitably became self-determination for whom. "How large or how small shall the unit of a people for such decision be?" Taft asked. "Shall units be racial or geographical?" Similarly, the principle of self-determination jarred with Root's systematic mind. Any grievance against a government could produce a demand for independence. "If you wipe out the rules so that nothing is settled and everybody is disputing about every question as to how everything shall be done,

77. Root to Le Baron Colt, August 28, 1919, box 137, *Root Papers*; Root to Lodge, September 10, 1919, box 161, *Root Papers*; Root to Lodge, June 19, 1919, box 161, *Root Papers*; Taft to Selden Spencer, July 8, 1919, reel 557, *Taft Papers*; *Congressional Record*, 66th Cong., 1st Sess. (June 10, 1919), 898–99.

then there is no peace or security for anybody living his life," Root commented, "then there is no peace or security for anybody living his life."⁷⁸

The legalist-sanctionists and Wilson talked past one another. Their mindsets were subtly incompatible. In constructing a voluntarist organization en route to a fuller international polity, they adopted different starting points in the circular logic of liberal statehood. Within states, law was held to be legitimate because it was created and enforced by a state representing the popular will, and the state was deemed legitimate vis-à-vis the people because it was based on law. Because this logic described an end result, not how to get there, the legalist-sanctionists and Wilson could choose different liberal paths for fashioning an international polity. Legalist-sanctionists believed polities evolved most basically through the development and enforcement of legal code, which would then presumably comport with the popular will. Wilson saw political evolution as effectuated most directly through politicians' interpretations of the popular will, interpretations that should then be broadcast and presumably enforced thereby. Legalist-sanctionists, in sum, prioritized the accretion of law, as decided by courts and backed by force; Wilson, the accretion of habit, as divined and proclaimed by politicians. It is not difficult to see why this abstruse theoretical divergence eluded many participants at the time and scholars since. Yet the consequences for the design of international organization were profound. A legalist-sanctionist league sought to establish enforceable commitments to rules that applied immediately to every case they specified. Wilson's League espoused norms intended to embody common consciousness and appeal to common conscience. They might not be effected evenly, if at all, until the distant future.

As it happened, the Senate endorsed neither legalist-sanctionists' concrete commitments nor Wilson's aspirational norms. No senator formally introduced Root's amendments. As for the Treaty of Versailles, it was handily defeated both with and without reservations in November 1919. The treaty with reservations won a majority, forty-nine to thirty-five, in the second and decisive vote on March 19, 1920, but the yeas fell seven short of the necessary two-thirds and Wilson said he would block a modified Covenant anyway.⁷⁹ As America entered the 1920s and reevaluated its role in world affairs, the Senate had repudiated Wilsonianism while barely pondering the alternative.

A CENTURY OF NEGLECT

Aspirational Wilsonianism and legalist-sanctionism, the two major pro-league American internationalisms, were quickly reduced to marginality, if that, after 1920. In Europe one of the last embers of the movement to enforce

78. Erez Manela, *The Wilsonian Moment: Self-Determination and the International Origins of Anticolonial Nationalism* (Oxford, 2007); Roosevelt to James Bryce, November 19, 1918, in *Roosevelt Letters*, vol. 8, 1400-01; "Self Determination," *Public Ledger*, October 3, 1918, in *Taft Works*, 124; Address on the Constitution, September 17, 1919, box 220, *Root Papers*.

79. Cooper, *Breaking the Heart*, 283.

international law cooled in 1925, when the British government declined to ratify a League protocol to obligate the judicial settlement of legal disputes and authorize the enforcement of court rulings. Insofar as the League of Nations went on to enhance interstate security, it was as an adjunct to power politics.⁸⁰ Nothing surmounted the anarchy in which states were led to fight and people, by the millions, to die.

Need history have been so? Would a legalist-sanctionist league have fared better? This proposition might have been tested. If Roosevelt or Taft had beaten Wilson in 1912, if Hughes had exceeded his 48 percent of electoral votes in 1916, if Roosevelt had lived to become president in 1920—or if Wilson's organicism had been less thoroughgoing—America would have urged a legalist league at Paris. Other nations might have signed on. Strong support for a legalist-sanctionist league existed in France, and although Whitehall looked askance at assuming formal obligations to enforce peace, Britain might have accepted a modest league that protected its empire, cemented Anglo-American cooperation, and bound Washington to secure the European continent.⁸¹

A legalist-sanctionist league probably would have extended an even freer hand to colonial empires than the mandates system granted. Its designers deemphasized or ignored the cultural, intellectual, biopolitical, and economic forms of cooperation ultimately fostered by the League.⁸² At the same time, it might have outperformed the League with respect to interstate security. A legalist-sanctionist league was largely intended to complement not replace power

80. Philip Noel-Baker, *The Geneva Protocol for the Pacific Settlement of International Disputes* (London, 1925); Zara Steiner, *The Lights That Failed: European International History, 1919–1933* (Oxford, 2005), 299, 380–81; Peter Yearwood, *Guarantee of Peace: The League of Nations in British Policy, 1914–1925* (Oxford, 2009), chaps. 7–8.

81. France desired an unambiguous security commitment to restrain Germany and an invigorated international legal regime. At the peace conference, France proposed the compulsory arbitration of disputes, preferably enforced by an international standing army. The British attitude toward a legalist-sanctionist league is difficult to gauge. Whitehall ultimately backed an organicist and aspirational league similar to Wilson's that was informed by German idealism and liberal fear of state power. Nevertheless, if presented with firm Franco-American support for a legalist-sanctionist league, Britain might have found a suitable arrangement. Legalist-sanctionist elements were present in many schemes of British peace societies and government officials, and Prime Minister David Lloyd George felt pressured to return from Paris having delivered on his election promise to establish a league. See Egerton, *Great Britain and the Creation of the League of Nations*, 136–74; Koskenniemi, *Gentle Civilizer of Nations*, 293–95; Jeanne Morefield, *Covenants without Swords: Idealist Liberalism and the Spirit of Empire* (Princeton, NJ, 2005); Steiner, *The Lights That Failed*, 381; Winkler, *The League of Nations Movement in Great Britain*, 21–22, 258–62; Yearwood, *Guarantee of Peace*.

82. An introduction to the growing literature includes Patricia Clavin and Jens-Wilhelm Wessel, "Transnationalism and the League of Nations: Understanding the Work of Its Economic and Financial Organisation," *Contemporary European History* 14, no. 4 (November 2005): 465–92; Paul Weindling, ed., *International Health Organisations and Movements, 1918–1939* (Cambridge, England, 1995), chaps. 4–8; Akira Iriye, *Global Community: The Role of International Organizations in the Making of the Contemporary World* (Berkeley, CA, 2002), 9–36; Dorothy Jones, *Toward A Just World* (Chicago, 2002), 45–132.

politics in the short run. Its architects supported a specific Anglo-American guarantee of French security, as did other Republican leaders.⁸³ Furthermore, the legalist-sanctionist dedication to deep if narrow obligations might have relieved some of the ambiguity that facilitated Europe's interwar insecurity. France, for instance, should have received a clearer statement of whether or not the league, or particular members, intended to counter German aggression. In the event, the "moral obligation" of collective security instantly inspired cynicism and uncertainty among diplomats, even as it aroused the hope of publics.⁸⁴ From then on, a gulf opened between rhetoric and reality. International organization remained distant from the substance of international politics.

Not least, the United States likely would have joined a legalist-sanctionist league. The debate over Wilson's League was a bruising fight. It roused nationalists, divided internationalists, and cast a decades-long shadow over U.S. diplomacy. By contrast, the plans of Roosevelt and to a lesser extent of Root guarded national sovereignty, and Taft was flexible enough to support any amendments needed for ratification. Had the league debate been not divisive but unifying, the United States might have exercised political and military power more vigorously into the 1920s.

That is not to say a legalist-sanctionist league would have functioned as intended, much less averted World War II. Leaving aside problems with their conception of international law—beginning with the sharp antitheses they posited between law and politics, justiciable and nonjusticiable disputes⁸⁵—Roosevelt, Root, and Taft failed to reconcile their dual imperatives of collective security and state sovereignty. However much Roosevelt and Root wanted league obligations to be unambiguous and unavoidable, they felt compelled to compromise lest a suprasovereign "tyranny" result: they let a council of great powers decide how (in effect whether) to apply enforcement in each case, and Roosevelt gave states the jurisdiction to determine whether their own disputes belonged in court. More broadly, all legalist-sanctionist schemes rested on dubious assumptions. In theory, as Root explained, each great power would perceive an interest in supplying enforcement because successful defiance anywhere would discredit the entire system on which it depended for its own security. But would the strongest states truly depend on the system's scrupulous maintenance, and think so? Root's theory best suited an international system comprising many states equal in power, among other conditions. Perhaps Root never threw himself wholeheartedly behind a league because he sensed these

83. Ambrosius, "Wilson, the Republicans, and French Security after World War I."

84. See Egerton, *Great Britain and the Creation of the League of Nations*, 135, 159; Felix Morley, *The Society of Nations: Its Organization and Constitutional Development* (Washington, DC, 1932), 195.

85. See Hersh Lauterpacht, *The Function of Law in the International Community* (Oxford, 1933), 139–241; Hans Morgenthau, *Die Internationale Rechtspflege, ihre Wesen und ihre Grenzen* [*The International Judicial System: Its Essence and Its Limits*] (Leipzig, 1929), 62–128.

obstacles. The legalist-sanctionists nevertheless mounted one of the most sophisticated efforts anywhere to think through the logic of collective security and embody it in practical schemes—especially compared with Wilson. The president's ambivalence toward formal arrangements and faith in historical progress kept him from confronting the fact that collective security, because it rests on deterrence, “permits no ifs or buts,” in the words of a later analyst.⁸⁶

When the League of Nations dissolved after World War II, the United Nations loyally rose. Its protagonist remained the politician, now on the Security Council. The International Court of Justice offered machinery states could use or ignore as they pleased, lacking a general compact obligating the judicial settlement of legal disputes. Parliamentary form and aspirational logic continued to characterize international organization. Not that a prominent alternative had circulated during the Second World War. This time internationalists feared “isolationism,” a pejorative initially attached to non-interventionists of the 1930s, and closed ranks against it. America's rejection of League membership now looked world-historical in import, not to be repeated. Out of this new generation's preoccupations came, in 1944, Ruhl Bartlett's *The League to Enforce Peace*, still the principal history of that organization. The book glossed over the LEP's manifest legalism, presenting its activists as intellectual allies of Wilson who hurt their own cause by quibbling over details.⁸⁷

The legalist-sanctionist league idea was gone, even as history. In his public letter of March 1919, Root forecast what would happen if international society passed up the chance to strengthen international law. Beyond the need to settle “political questions upon grounds of expedience,” it was “also necessary to insist upon rules of international conduct founded upon principles.” There was a “true method” for establishing principles and giving them effect: “the development of law, and the enforcement of law, according to the judgments of impartial tribunals.” Anything less would doom international organization to transience: “I should have little confidence in the growth or permanence of an international organization which applied no test to the conduct of nations except the expediency of the moment.” The collapse of the League, two decades later, might seem to vindicate Root's prediction. In fact, the rest of the twentieth century

86. Conditions for collective security are enumerated in Inis Claude, “Collective Security as an Approach to Peace,” in Donald Goldstein, Phil Williams, and Jay Shafritz, eds., *Classic Readings and Contemporary Debates in International Relations* (Belmont, CA, 2006), 289–302. These conditions apply to the legalist-sanctionist league even though Claude assumed that collective-security systems prize curbing aggression above enforcing international law; the legalist-sanctionists combined the two goals.

87. Bartlett, *The League to Enforce Peace*, 209. A trenchant chapter-long treatment of the LEP is Sandra Herman, *Eleven Against War: Studies in American Internationalist Thought, 1898–1921* (Stanford, CA, 1969), chap. 3. On American internationalism during the Second World War, see Robert Divine, *Second Chance: The Triumph of Internationalism in America During World War II* (New York, 1967); Dorothy Robins, *Experiment in Democracy: The Story of U.S. Citizen Organizations in Forging the Charter of the United Nations* (New York, 1971).

proved Root wrong. A flexible international organization was just the kind America wanted upon taking the reins of world leadership in 1945, just the kind that could withstand the accompanying downgrading of law as the basis of international order.⁸⁸ Root's vision held appeal only as long as America sought to be in the world, not running it.

88. Root to Will Hays, March 29, 1919, box 137, *Root Papers*. On the marginalization of international law after World War II, and the displacement of international law by international relations, see Koskenniemi, *The Gentle Civilizer*, 413–509.