World War I, Self-determination, And The Legacies Of Medieval Jurisprudence

Assoc. Prof. Karl SHOEMAKER
University of Wisconsin, Madison

Abstract: *The principle of self-determination in international law is in part an outgrowth of particularly Christian concepts of state sovereignty that emerged in Europe at the end of the Middle Ages, and which have enjoyed a considerable afterlife. Even if its medieval origins are largely unappreciated by modern scholars of international law, the principle of self-determination was appealed to in the nineteenth and early twentieth centuries in ways that privileged Christian concepts of statehood and national identity. Further, this nineteenth-century experience, particularly as it unfolded in the Ottoman Balkans, had important but neglected repercussions for the development of international law at Versailles in 1919 and thereafter.*

Keywords: *self-determination, international law, Versailles, Ottoman Balkans*

Birinci Dünya Savaşı, Ulusların Kendi Kaderlerini Tayin Hakkı Ve Orta Çağ Hukukunun Mirasları

Özet: *Uluslararası hukuktaki, ulusların kendi kaderlerini tayin edebilme hakkının kökenleri, Orta Çağ'ın sonlarında Avrupa'da, özellikle de Hıristiyan devlet egemenliği kavramlarından kısmen ortaya çıkmış ve kayda değer ölçüde varlığı devam ettirmiştir. Modern uluslararası hukuk uzmanları tarafından bu hakkın ortaçağ kökenleri genel olarak dikkate değer bulunmasa da, 19. yüzyılda ve 20. yüzyılın ilk yarısında ulusların kendi kaderini tayin etmesi, ayrıcalıklı Hristiyan kavramlarından devlet kurma ve ulusal kimlik olacak şekilde yeniden şekillenmiştir. Hatta, özellikle Osmanlı yönetimi altındaki Balkan*

topraklarında 19. yüzyılda meydana gelen gelişmeler, önemli olmasına rağmen, yankıları 1919'da Versay'da ve sonrasında, uluslararası hukuku geliştirebilmek için göz ardı edilmiştir.

Anahtar Kelimeler: *Ulusların kendi kaderini tayin hakkı, uluslararası hukuk, Versay, Osmanlı, Balkanlar*

Introduction

If we neglect for a moment their spectacular failure a few decades after their ratification, the proposals put forward at the peace conference held at Versailles in 1919 represented several important transformations in international law. The "Great War" had decisively shattered the balance of power system that had given relative stability to certain parts of nineteenth-century Europe, and at Versailles the statesmen and diplomats who gathered there sought to create a system by which international law could help to prevent the recurrence of such horrors going forward. Some of the successes at Versailles were overshadowed by the ultimate frailty of the League of Nations. In hindsight, the frailties are easy to see. The United States, whose president, Woodrow Wilson, had been the major proponent of the League, could not in the end even persuade itself to join. In the decades following Versailles, unchecked aggressions by Italy in Africa, by Japan in Manchuria, and by a reconstituted Germany in Europe further demonstrated the weakness of the League and the toothlessness of the international legal order. Even so, the Versailles conference produced some successes. Most notably, the League also established the Permanent Court of International Justice, the first such standing international institution established and staffed with full-time professional jurists.

More controversially, the League, and Woodrow Wilson's passionate advocacy for the League, is also usually credited by scholars with fatefully introducing the principle of self-determination into international law. This observation requires further explanation because the relationship between the League of Nations and the emergence of self-determination as a contested principle of international law is not at all straightforward. As this article will show, the rhetoric of self-determination had been present in international law much earlier than the Versailles conference. Wilson in no way invented the principle. He did, however, come to be seen as a notable proponent of self-determination in the months after the conclusion of the Versailles conference. Wilson's role in this regard has been exaggerated. The principle of self-determination was a natural outgrowth of the intellectual approach to international law that had come to predominate Western legal thought in the nineteenth century, and can be seen at work already in the diplomatic maneuvers that resulted in the Great Powers breaking up the Ottoman territories in the Balkans over the long course of the nineteenth century. A closer examination, moreover, shows that the principles grounding self-determination rested on legal concepts first developed by European

jurists in the late medieval period, centuries before jurists like Francisco Vitoria and Hugo Grotius set about systematizing and rationalizing international law. These concepts, when deployed in the nineteenth century, remained rooted in certain aspects of medieval Christian theology. To a very real extent, the principles of self-determination and nationalism over-determined the enthusiasm with which the Great Powers abandoned the old international order and began carving up parts of the Ottoman Empire in Southeastern Europe. This claim rests on an interesting paradox. Since modern international law is normally regarded as having been emancipated from theology by early modern jurists like Hugo Grotius, how could theologically inspired principles of international law have been at work in the nineteenth century? This article will trace that history, showing that the principle of self-determination in international law is in part an outgrowth of particularly Christian concepts of state sovereignty that emerged in Europe at the end of the Middle Ages, and which have enjoyed a considerable afterlife. Even if its medieval origins are largely unappreciated by modern scholars of international law, the principle of self-determination was appealed to in the nineteenth and early twentieth centuries in ways that privileged Christian concepts of statehood and national identity. Further, this nineteenth-century experience, particularly as it unfolded in the Ottoman Balkans, had important but neglected repercussions for the development of international law at Versailles and thereafter.

a. The Medieval European Origins of International Law

It is commonly said that the intellectual origins of modern international law lay in the seventeenth century.[1] These origins are normally associated with the systematizing labors of the Dutch jurist, Hugo Grotius, though the work of sixteenth-century Spanish jurist, Francisco Vitoria, is also considered crucial for the early development of international law.[2] Even so, it has also been recognized that the roots of modern international law, and many of the legal principles which early modern jurists of international law set about systematizing, can in fact be located much earlier, specifically in the work of medieval jurists who were occasionally required to mark the legal boundaries of papal

1 For example, see Antony Anghie, "Basic Principles of International Law: A Historical Perspective," in *International Law for International Relations*, ed. Başak Çalı (Oxford: 2010), pp. 46-70.

2 For example, see, Ernest Nys, *Les origines du droit international* (Brussels-Paris: 1894), p. 11

authority over non-Christians and to regularize the rules concerning envoys and ambassadors.[3] For example, medieval jurists debated on occasion whether and under what circumstances Christian law could be extended over non-Christian groups.[4] By the thirteenth and fourteenth centuries, these debates became more developed. They were particularly relevant at the Papal court in Rome, where a growing legal and institutional apparatus was turned toward identifying and subjecting to legal processes a range of groups that included heretics, but also Jews and Muslims living under Christian rule.[5] The hesitancy of the papacy to claim legal jurisdiction over non-Christians that was fairly evident before the twelfth century gave way to an account of the Pope as the "*judex ordinarius*" (ordinary judge) of everyone. A more universalizing impulse in Christian law can be detected thereafter, and is evident, for example, in Pope Innocent IV's assertion in the thirteenth century that the papacy could have legal jurisdiction over Muslims. Such a claim was easier to state than to accomplish, but it was consistent with the increasingly universalizing tendencies and "anthemic arrogance" of Western legal developments in the late middle ages.[6]

This anthemic arrogance was built in to the intellectual fabric of the canon lawyers, who by the thirteenth century came to see Christian law as the comprehensive intellectual framework for understanding all of human history. For example, according to thirteenth-century canon lawyer and bishop, Hostiensis, world history was divided into three distinct ages.[7] The first of these ages was the age of *lex naturale* (natural law), which Hostiensis thought had governed the world from creation up until the Ten Commandments were bestowed to mankind at Mount Sinai. The reception of the Ten Commandments initiated the second age of

3 James Muldoon, "The Contribution of the Medieval Canon Lawyers to the Formation of International Law," 28 (1972) *Traditio* 483-497.

4 See, for example, Kenneth Stow, *Catholic Thought and Papal Jewry Policy, 1555-1593* (New York: 1977); and Kenneth Stow, "Expulsion Italian Style: The Case of Lucio Ferraris," 3 (1988) *Jewish History* 51-63; For an excellent introduction to the transformations in medieval canon law that justified the coercive use of force against non-Christians, see Kathleen Cushing, *Papacy and Law in the Gregorian Revolution: The Canonistic Work of Anselm of Lucca* (Oxford: 1998).

5 R.I. Moore, *The Formation of a Persecuting Society: Authority and Deviance in Western Europe, 950-1250* (Oxford and New York: 1987).

6 The phrase "anthemic arrogance" is Patrick Wormald's, and he locates it at a very early period in medieval history. See his important work, *The Making of English Law: King Alfred to the Twelfth Century, Legislation and its Limits*, Vol. 1 (London: 1999).

7 See, for example, Knut Wolfgang Nörr, "Recht und Religion: über drei Schnittstellen im Recht der mittelalterlichen Kirche," 79 (1993) *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte (KA)* 1-15.

law, which was characterized by strict observance of rites and lasted until the advent of Christ. In this view, the age of Christian law was overcame the rote practices of the ancient Jewish religion and was characterized by a newfound reliance upon the justice and equity of a divinely sanctioned, Christ-like king.[8] This last age, thought Hostiensis, would continue until the end of the world and the Last Judgment, when Christ would judge the living and the dead according to their deeds. This attention to the framework of legal history as understood from within Christianity may seem odd to discuss here, as it may seem irrelevant to later developments in international law. However, it is important to keep in mind that this account of the stages of world legal history attributed to Christian law a stage of perfection that was implicitly understood to be lacking in the laws and customs of non-Christian peoples. In this view, the legal practices of Jews and Muslims were considered inferior, the activity of peoples deemed unable to understand the spiritual significance of the new dispensation of divine law or the inherent authority of Christian rulers. From the standpoint of medieval canon lawyers, Muslims and Jews appeared to be still mired in the technical legalism of the Old Testament and blind to the advent of the age of Christian sovereignty.

This privileging of Christian law and Christian history over Judaism and Islam had a number of consequences. One such consequence was a tendency throughout the medieval period to include Muslims within the debilitating legal categories that had been articulated for Jews.[9] This connection was reinforced by medieval canon lawyers, who even mistook the meaning of the term "Saracen," the word conventionally used by Christians to refer to Muslims in the medieval and early modern periods. The word "Saracen" (in medieval Greek, *sarkenoi*) was derived from the Arabic word for "east" and "the sunrise" (*sharq*-), but medieval jurists, ignorant of this origin, had another explanation. According to Bernard of Pavia (1150-1213), the author of an important medieval legal commentary, the term Saracen designated: "those who receive neither the Old nor New Testament, and who do not want to be called not after Hagar, the slave of Abraham from whom they descended, but would

8 The classic account of Christological kingship in the Middle Ages remains Ernst Kantorowicz, *The King's Two Bodies: A Study of Medieval Political Theology* (Princeton: 1957, reprinted 1997).

9 Benjamin Z. Kedar, "De iudeis et saracenis: On the Categorization of Muslims in Medieval Canon Law," in *Studia in honorem eminentissimi cardinalis Alphonsi M. Stickler* eds. Joseph Rosalio and Lara Castillo (Rome: 1992) pp. 207-213.

rather be called after Sara, Abraham's wife and a free woman."[10] This fabricated and confused etymology contained an important but subtle juridical assertion. Because it characterized Muslims as descending from a slave woman, it simultaneous called into question the legitimacy and legal status of contemporary Muslims. Such reservations concerning the origins of Islam were sometimes used by medieval jurists to justify war against Muslims.[11] Additionally, some medieval lawyers worried about whether it was lawful for Muslims to own Christian slaves, though they did not concern themselves with the legality of Christian masters owning Muslim slaves.[12]

Perhaps the most far-reaching consequence of the approach to Islam taken by medieval European jurists was that it led fairly naturally to a question concerning whether Muslim political rulers could properly exercise the full sovereignty. For Christian rulers this posed no problem, since their authority was bolstered by ecclesiastical approval. But this led medieval jurists such as Hostiensis to hold that political power exercised outside the purview of the Christian Church was inferior to the power exercised by Christian rulers. Such views, which were derived from one strand of medieval just war theory, made it lawful to initiate war against nonbelievers, whose very authority over their subjects was considered unjustified.[13] Papal pronouncements justifying war against Muslims were not hard to find. As early as the eleventh century Pope Alexander II had succinctly advised Iberian Christians, "We should not persecute Jews." Instead, he explained, "we should persecute Muslims." To justify this exhortation, Pope Alexander differentiated between Jews and Muslims, explaining, "Muslims have expelled Christians from their cities and lands, thus they are justly combatted." Alexander II characterized Jews as "everywhere ready to serve" Christians, reinforcing their subservient status within a properly functioning Christian polity. Alexander II's letter, written in the context of military conflicts between Christians and Muslims in eleventh-century Spain,

10 Bernard Papiensis, *Summa Decretalium*, 5.5 ed. E.A.D. Laspeyres, (Regensburg: 1860) p. 210. Bernard allowed, however, that "there are among the Saracens some who receive the Five Books of Moses, and respect the prophets, who are called Samaritans from the city of Samaria."

11 Kedar, "De iudeis et saracenis," p. 210. There was some confusion among medieval lawyers about whether Islam was a monotheistic religion. Some held Muslims to be idolaters who worshipped many gods and goddesses, though the better informed theologians knew full well that Islam was a monotheistic religion.

12 See, for example, Benjamin Z. Kedar, "Muslim Conversion in Canon Law," *Proceedings of the Sixth International Congress of Medieval Canon Law* (Vatican City: 1980) pp. 321-335.

13 Muldoon, "The Contribution of the Medieval Canon Lawyers to the Formation of International Law," p. 484.

deserves our attention for a number of reasons, not least because it was later incorporated major legal sources in the medieval period, including Ivo of Chartres' *Panormia* and eventually, under *Causa* 23, into Gratian's *Decretum*. Gratian's *Decretum* was the foundational text in the corpus of medieval and early modern canon law and was hugely influential in the later centuries.[14] Pope Alexander II's description of Jews as "ready to serve" harkened to an ancient Christian polemical tradition. This polemical tradition was well exemplified by Augustine, who taught that Jews should be treated as a theologically subservient and cautionary example, living evidence of the negative spiritual consequences of failing to recognize the true Messiah, and as a subjugated social group within Christendom. Pope Alexander II's designation of Muslims as enemies and deserving targets of Christian military force also signaled the abandonment of an older Christian theology, which was opposed to military force, and marked the emergence of the sort of arguments that would be used to justify the crusades a few decades later. In short, there was a clear strand of medieval canon law that argued for denying to non-Christians full standing within the community of rulers, and which directly suggested that non-Christian rulers did not merit the recognition and deference due to Christian kings.

There were, however, also strong opposing arguments within medieval canon law. In the thirteenth century, Pope Innocent IV, who had been an accomplished canon lawyer before he ascended to the papal throne, took the view that infidels could exercise fully legitimate political power. His opinions were endorsed by other jurists as well, setting up a tension between the arguments of Hostiensis and Innocent IV.[15] Such arguments were rehearsed in detail in the early fifteenth century at the Council of Constance (1414-1418), where the Teutonic Knights, relying on the arguments of Hostiensis, claimed a right to conquer Lithuania based on the fact that the Lithuanians were pagan and not Christian. Representatives of the Christian King of Poland countered by rejecting the position of Hostiensis in its entirety.[16] No clear decision was reached at the Council of Constance. However, in the coming centuries, it was not the position of Hostiensis, but that of Innocent IV that prevailed. The

14 The letter can be found in J.-P. Migne, ed., *Patrologiae latinae cursus completus*, vol. 146 (Paris, 1884), "*Alexandri II pontificis Romani epistolae et diplomata*," no. 101, cols. 1386D-1387A. An edited version of the letter appears in Gratian's *Decretum* at C. 23, q. 8, c. 11.

15 Muldoon, "The Contribution of the Medieval Canon Lawyers to the Formation of International Law," p. 483-5.

16 Nys, *Les origines du droit international*, pp. 144-50.

preponderance of early modern juridical opinion had developed to hold that it was not necessary for a ruler to be a Christian in order to be recognized as a sovereign and that even non-believers had certain natural rights that must be respected.

b. Early Modern International Law and the Privileges of Sovereignty

The most notable European jurist to argue for the recognition of sovereignty among non-Christian peoples was Francisco Vitoria, a Spanish jurist and theologian. In the sixteenth century, Vitoria wrote a highly influential treatise concerning the legal rights at stake in Spanish exploration of the new world.[17] In that treatise, Vitoria argued that the indigenous peoples of Latin America, despite being pagans, had legal ownership of their land, were ruled by legitimate princes, and could only be attacked militarily if they gave just cause.[18] As some scholars have noticed, this did not exactly even the field. For Vitoria also argued that principles of natural law gave the Spanish unconditional rights to enter the land of the natives and to carry out commercial activities whether they were welcomed or not. Refusal on the part of the natives to allow entry, or refusal to allow trade, were viewed by Vitoria as *causae belli*, justifications for war and conquest.[19] Moreover, in Vitoria's vision of international law, war, once begun, justified the reduction of the native peoples into slavery:

> *And inasmuch as war with pagans is of this type, seeing that it is perpetual and they can never make amends for the wrongs and damages they have wrought, it is indubitably lawful to carry off both the children and the women of the Saracens into captivity and slavery.*[20]

Interestingly, in setting the non-Christian peoples of the new world outside the protections of law that operated within early modern Europe (i.e. prohibitions against enslavement), Vitoria reached for an example

17 Francisco de Vitoria, *Relectio de Indis*, (Madrid: 1989, reprinted from 1517 edition).

18 See, for example, the discussion in J.M. Kelly, *A Short History of Western Legal Theory* (Oxford: 1992), pp. 200-1.

19 Antony Anghie, "The Evolution of International Law: Colonial and Post-Colonial Realities," in 27 (2006) *Third World Quarterly* pp. 739-753.

20 Vitoria, *De indis et de iure belli relectiones*, ed. Ernest Nys, trans. John Pawley Bate (Washington, D.C.: 1917, reprinted from 1557 edition), p. 181.

and found the Saracens (Muslims) ready at hand. Without membership in the Christian community, new world natives and Muslims did not enjoy the full protections of international law. Put another, when Christian powers were dealing with non-Christian peoples, Vitoria understood all of the privileges to be on the side of the Christian princes.

Still, we may ask what the state of sixteenth century international law has to do with nineteenth century conflicts between the Great Powers and the Ottoman Empire, or what any of it has to do with the settlements reached at Versailles in 1919. Indeed, it is commonly held that since the days of Hugo Grotius, that the law of nations rested upon principles of natural law and reason began to crumble. In its place, arose a form of legal positivism that asserted nations could only be bound by rules of law to which they had consented. The jurisprudential transition from natural law to positive law, often identified as a nineteenth-century phenomenon is well known, as is its impact on international law.[21] But it was accompanied by some other shifts as well. One such shift can be seen in the assertion among nineteenth-century jurists in the West that international law was the outgrowth of "Christian" principles, not universal reason.

International law, as it was generally understood before 1800, proved an uncomfortable fit with expansionist claims to empire, and the nineteenth century saw a redefinition of its philosophical foundations in order to make it applicable to colonial and semi-colonial contexts. Early writers on international law had taken an inclusive, natural law approach that made it difficult to reject claims of indigenous states and rulers to the same treatment as European states. True, as we saw above, the rules were heavily stacked in favor of the European powers, but the basic ability of non-Christian, non-European peoples to own property and exercise political sovereignty was actively denied by European jurists. Emerich de Vattel in his Law of Nations, a standard treatise first published in 1758, declared, without any reservations based on religion that, "there is no doubt of the existence of a natural Law of Nations, inasmuch as the Law of Nature is no less binding upon States, where men are united in a political society, than it is upon the individuals themselves." By this definition, the law of nations "is a special science which consists in a just and reasonable application of the Law of Nature

21 See, for example, Antony Anghie, "Basic Principles of International Law: A Historical Perspective," in *International Law for International Relations*, ed. Başak Çalı (Oxford: 2010), pp. 46-70.

to the affairs and conduct of Nations and of sovereigns."[22] The implication, which is at least as old as Hugo Grotius, is that international law, while of European origin, is universally applicable, and quite separate from Christian morality. During the nineteenth century this some international law scholars began reverting to positions that aligned much more with those articulated by Francisco Vitoria in the fifteenth century. This was related to the fact that the natural law justifications for international law were being abandoned and replaced by some jurist with a much more "parochial idea: that international law was Christian in its origins and that only those non-Christian states that had reached a comparable level of "civilization" could be treated as full participants in international law."[23] A vivid example of this can be found in Henry Wheaton's textbook *Elements of International Law,* which was first published in 1836. Wheaton was an accomplished jurist and his textbook quickly came to replace Vattel's on the shelves of English-speaking diplomats. In it he asserted:

> *The law of nations or international law, as understood among civilized, Christian nations, may be defined of consisting of those rules of conduct which reason deduces, as consonant to justice, from the nature of the society existing among independent nations; with such definitions and modifications as may be established by general consent.*[24]

Wheaton is not coy about the fact that he sees international law as the product of Christian civilization, and he used it to justify a range of inequalities between the Great Powers and non-Christian states, including unequal treaty relations. This tenor of this language, familiar to students of European colonialism, not only privileged the justice of Christian nations, but it also created a template in which the political subjection of Christian populations to non-Christian rulers remained an intractable a problem of international law.

From this standpoint, the language of national self-determination, which began to taken on increasing potency in the nineteenth century, takes on

22 See, E. de Vattel, The Law of Nations or the Principles of Natural Law Applied to the Conduct and Affairs of Nations and of Sovereigns, ed. Charles G. Fenwick (New York: reprint 1964) p. 3a. See the excellent comparative discussion of this in Richard S. Horowitz, "International Law and State Transformation in China, Siam, and the Ottoman Empire During the Nineteenth Century," in *Journal of World History* 15 (2004) pp. 445-486.

23 Horowitz, "International Law and State Transformation in China, Siam, and the Ottoman Empire During the Nineteenth Century," p. 452-3.

24 Henry Wheaton, Elements of International Law (Philadelphia: 1836, reprint 1972) p. 46.

new implications. For example, the great nineteenth-century scholar of international law, Pasquale Stanislao Mancini, relying on ideas of national self-determination was able to invert the relationship between the state and nation, claiming that the "nation and not the state . . . represented the basic unit of the international legal order.[25] By the term nation, Mancini understood "communities united by natural and historical factors such as territory, race, and language, as well as by consciousness of shared nationality." Such unified national communities, he argued, "should be allowed by international law to organize into states, and exercise sovereignty on par with the other members of the international order."[26] Such formulations dovetailed smoothly with the ideas of jurists like Wheaton, who privileges Christian sovereignty over other forms, and gave a forceful impetus to the claims of peoples, such as Christian communities in the Balkans not only to justify separation from the Ottoman Empire, but to achieve the status of an autonomous state in the international order. Such expectations, as Ayten Kılıç, has recently showed were eagerly inflamed by the Great Powers in the later half of the nineteenth century, leading to a series of conflicts in the Balkans that can be seen culminating in the outbreak of World War I.[27] From this perspective, Wilson's post-war remarks contributed momentum to this phenomenon, but he did not initiate it. The events at Versailles in 1919 had long roots.

c. Self-Determination, Woodrow Wilson, and Versailles

There is significant disagreement concerning President Woodrow Wilson's stance toward national self-determination. According to some, he disastrously introduced the concept of self-determination into international law at the end of World War I. Other critics claim, on the other hand, that Wilson instead failed to introduce a sufficiently robust concept of self-determination into international law. The confusion over Wilson's legacy in this regard emerged almost immediately upon the publication of Wilson's Fourteen Points. In 1918 and 1919 there was significant disagreement about Wilson's stance on self-determination even among some of Wilson's closest advisors there. For example, in May 1919, William Bullitt publicly resigned from the American peace

25 Guido Comparato, *Nationalism and Private Law in Europe* (Oxford, and Portland, OR: 2014) p. 69

26 Kelley, "A Short History of Western Legal theory," p. 346.

27 "Paved with Good Intentions: The Road to the 1877-78 Russo-Ottoman War, Diplomacy and Great Power Ideology," unpublished dissertation (University of Wisconsin, Madison, 2012).

commission in Paris when he read the terms of the Treaty of Versailles because did not think the treaty did enough to secure principles of self-determination. This failure, he protested, would lead to further oppression of the suffering peoples of the world. On the other hand, Robert Lansing, Wilson's Secretary of State, criticized Wilson for going too far in recognizing a right of self-determination. This failure, he lamented, would insure the continuation of uncertainty and instability in international law and the world order. Lansing's criticism took hold, and has shaped our understanding of Wilson's policy.[28] When he voiced these criticisms, Lansing may have had in mind his own experiences in having to inform representatives of the crumbling Austro-Hungarian empire that their plan to meet the objectives of Wilson's 10th Point were to be rejected, and that the US was backing independence for the Czechs, Slovaks, and South Slavs, thus hastening the end of the Austro-Hungarian empire. Two decades later, on the verge of the Second World War, E. H. Carr charged that the influence of "Woodrow Wilson with his principle of self-determination" had proved disastrous in the years since the Great War ended. "The victors 'lost the peace' in Central Europe," Carr insisted, "because they continued to pursue a principle of political and economic disintegration in an age which called for larger and larger units."[29] The subsequent embrace of a principle of self-determination in the UN Charter, where it is a firmly enshrined though still contested principle, appears to have further entrenched the perception, now widely held, that Wilson had played a key role in instituting the principle in international law in the aftermath of WWI.

Of course, the term "self-determination" appears nowhere in the text of the Fourteen Points or in Wilson's famous "Four Principles" speech. Admittedly, a great deal of the blame can be place on Wilson himself who in the months after his famous Fourteen Points speech played no small part in creating confusion about the principle of self-determination and its role in the postwar world order. Wilson carefully avoided the term self-determination in his Fourteen Points or in the speeches he gave in their support leading up to ratification. However, after ratification, Wilson never took steps to correct those who inferred a right of self-determination from his statements after the Versailles Treaty. Wilson, who had taught international law to undergraduate students at Princeton before he become president, would have know the important forces that

28 An excellent recent corrective on this subject is Trygve Throntveit, "The Fable of the Fourteen Points: Woodrow Wilson and National Self-Determination," 35 (2011) *Diplomatic History* pp. 445-481.

29 Throntveit, "The Fable of the Fourteen Points," p. 445-448.

lurked behind this inference. The caution and precision of Wilson's language leading up to the Versailles Treaty was replaced by broad and ambiguous claims about whether and how self-determination should be recognized as a right in international law and who could claim it. Two points should be made here. First, Wilson's post-Versailles support of a principle of self-determination was more limited than scholars of international law have assumed. For pragmatic reasons, many of which were directly related to the disposition of the former Ottoman provinces in the Balkans, Wilson was willing to accommodate self-determination in international law in certain instances, but not universally. Second, the problem of self-determination would have emerged as it did with or without Wilson's backing because it was embedded in the conceptual shifts that occurred within international law itself in the late nineteenth and early twentieth centuries, and whose roots, as we saw, extended back to the medieval period.

In Wilson's defense, he had a more subtle view of national self-determination than many of its proponents. In fact, Wilson's own understanding of the American experience complicated the question of self-determination. America of the nineteenth and early twentieth century, Wilson thought, demonstrated the power of civic unity to overcome ethnic, religious, and regional differences. For this reason, he compared opponents of his plan to those who sough to divide the United States during the American Civil War.[30]

On the international stage, Wilson's subtle understanding of the difference between civic unity and national self-determination were received differently. Stephen Paneretoff, the Bulgarian minister in Washington, confidently proclaimed that "Wilson's formula for the self-determination of nations alone [would be] capable of a lasting solution of the Balkan problem."[31] Other voices also turned Wilson's remarks in the direction they wanted. When the North American Review, a leading political journal of the time, paraphrased Wilson's remarks on "autonomous development" in the twelfth of the Fourteen Points, the journal editors simply stated: "the non-Turkish nationalities must be set free."[32] The twentieth century would see the principle if self-determination employed in numerous post-colonial conflicts, some of which granted sovereign autonomy to non-Christian nations. But the

30 Crucial historical background can be found in John Milton Cooper, Jr., *Breaking the Heart of the World: Woodrow Wilson and the Fight for the League of Nations* (Cambridge, 2001).

31 Throntveit, "The Fable of the Fourteen Points," p. 476.

32 Id., p. 475.

impetus for self-determination as a principle of international law can be found at work in the nineteenth century, where its logic was taken directly from an older tradition that explicitly privileged European, Christian sovereignty over other forms, even when it meant infringing on the sovereignty of existing governments.

Bibliography:

Antony Anghie, "Basic Principles of International Law: A Historical Perspective," in *International Law for International Relations*, ed. Başak Çalı (Oxford: 2010), pp. 46-70.

Antony Anghie, "The Evolution of International Law: Colonial and Post-Colonial Realities," in 27 (2006) *Third World Quarterly* pp. 739-753.

Guido Comparato, *Nationalism and Private Law in Europe* (Oxford, and Portland, OR: 2014)

Kathleen Cushing, *Papacy and Law in the Gregorian Revolution: The Canonistic Work of Anselm of Lucca* (Oxford: 1998).

John Milton Cooper, Jr., *Breaking the Heart of the World: Woodrow Wilson and the Fight for the League of Nations* (Cambridge, 2001).

Richard S. Horowitz, "International Law and State Transformation in China, Siam, and the Ottoman Empire During the Nineteenth Century," in *Journal of World History* 15 (2004) pp. 445-486.

Ernst Kantorowicz, *The King's Two Bodies: A Study of Medieval Political Theology* (Princeton: 1957, reprinted 1997)

Benjamin Z. Kedar, "De iudeis et saracenis: On the Categorization of Muslims in Medieval Canon Law," in *Studia in honorem eminentissimi cardinalis Alphonsi M. Stickler* eds. Joseph Rosalio and Lara Castillo (Rome: 1992) pp. 207-213

Benjamin Z. Kedar, "Muslim Conversion in Canon Law," *Proceedings of the Sixth International Congress of Medieval Canon Law* (Vatican City: 1980)

J.M. Kelly, *A Short History of Western Legal Theory* (Oxford: 1992)

Ayten Kılıç, "Paved with Good Intentions: The Road to the 1877-78 Russo-Ottoman War, Diplomacy and Great Power Ideology," unpublished dissertation (University of Wisconsin, Madison, 2012).

J.-P. Migne, ed., *Patrologiae latinae cursus completus*, vol. 146 (Paris, 1884), "*Alexandri II pontificis Romani epistolae et diplomata*."

R.I. Moore, *The Formation of a Persecuting Society: Authority and Deviance in Western Europe, 950-1250* (Oxford and New York: 1987)

James Muldoon, "The Contribution of the Medieval Canon Lawyers to the Formation of International Law," 28 (1972) *Traditio* 483-497.

Knut Wolfgang Nörr, "Recht und Religion: über drei Schnittstellen im Recht der mittelalterlichen Kirche," 79 (1993) *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte (KA)* 1-15

Ernest Nys, *Les origines du droit international* (Brussels-Paris: 1894)

Bernard Papiensis, *Summa Decretalium*, 5.5 ed. E.A.D. Laspeyres, (Regensburg: 1860)

Kenneth Stow, *Catholic Thought and Papal Jewry Policy, 1555-1593* (New York: 1977).

Kenneth Stow, "Expulsion Italian Style: The Case of Lucio Ferraris," 3 (1988) *Jewish History* 51-63.

Trygve Throntveit, "The Fable of the Fourteen Points: Woodrow Wilson and National Self-Determination," 35 (2011) *Diplomatic History* pp. 445-481.

E. de Vattel, The Law of Nations or the Principles of Natural Law Applied to the Conduct and Affairs of Nations and of Sovereigns, ed. Charles G. Fenwick (New York: reprint 1964)

Francisco de Vitoria, *De indis et de iure belli relectiones*, ed. Ernest Nys, trans. John Pawley Bate (Washington, D.C.: 1917, reprinted from 1557 edition)

Francisco de Vitoria, *Relectio de Indis*, (Madrid: 1989, reprinted from 1517 edition).

Henry Wheaton, Elements of International Law (Philadelphia: 1836, reprint 1972)

Patrick Wormald, *The Making of English Law: King Alfred to the Twelfth Century, Legislation and its Limits*, Vol. 1 (London: 1999).