# *Part 1: Peace Through Law?*

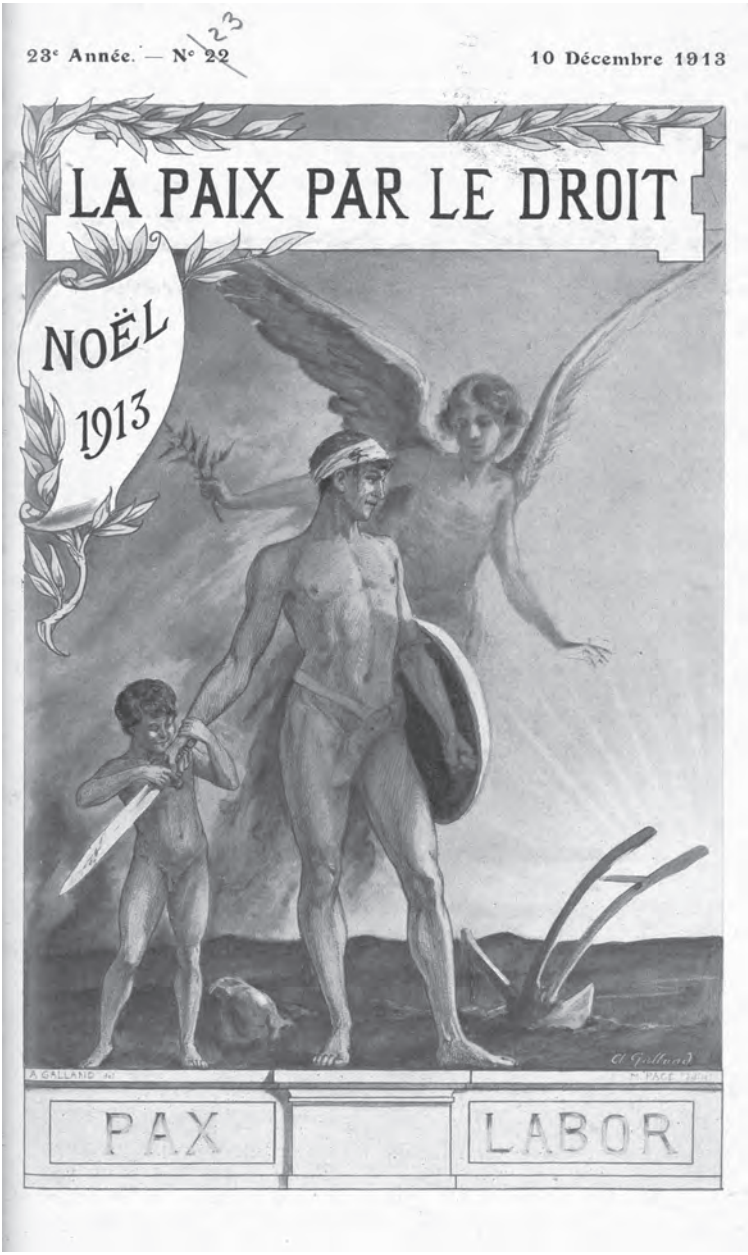
# Chapter 1 Drama Through Law: The Versailles Treaty and the Casting of the Modern International Stage

*Nathaniel Berman*[*]

## *1. Prologue: Noël, 1913*

One hundred four years before our conference, almost to the day: the journal of the French *Association de la Paix par le Droit* features on its cover a mythological image of the group's ideals, an engraving in the style of the Symbolist painter Gustave Moreau. The engraving, by a now-obscure artist, André Galland, depicts three archetypal figures. In the center stands an exhausted young warrior with bandaged head, clutching sword and shield with downcast arms. On the warrior's right, a cherub-like child is prying the sword from his hand; on the warrior's left, a winged ephebe hovers over him, gazing intently at his face. The ephebe, who could pass for the warrior's younger self, gestures forward with his hand, perhaps guiding the warrior to a path better than violence. Two objects lie on the ground, evidently posing the choice before the warrior. To the right lies a skull, near where the sword will land when it ultimately falls from the warrior's hand. To the left lies a ploughshare, presumably to be taken up when the warrior foreswears the sword. Below the three figures, tomblike stones announce the morals of the engraving, in solemn Latin: '*Pax*' and '*Labor*'. Above the figures, bold letters proclaim the title of the journal: '*La Paix par le Droit*'. Slightly off to the side, a banner announces the date, '*Noël, 1913*'.

* Rahel Varnhagen Professor of International Affairs, Law, and Modern Culture, Brown University.




*Maurice Galland, Cover of* La Paix par le Droit*, December 10, 1913. © Adagp, Paris, 2019. Source: Princeton University Library.*

And thus, less than eight months before the 'guns of August,' an evocative mythological depiction of Peace-through-Law stands before the journal's readers. From the distance of more than a century, we cannot but contemplate this image with terror, as we helplessly watch the pacifists of December, 1913, daydreaming at the edge of a volcano. One cannot fully know the intent of the artist and editors in foregrounding this image, the only time in the journal's history an art-work thus appeared. Was the image to be an inspirational beacon for a program to be implemented in the here-and-now? Or did it originate in an intuition that the ideal of Peace-through-Law was becoming a fantasy separated from reality? Melding these two possibilities, I would pose yet a third: perhaps the artist, as the sensuous unconscious of this thoroughly rational, endlessly discursive Association, sought to act as a kind of conjurer, to bring these archetypal figures into being, to place on the world stage the mythical *dramatis personae* who might have made possible a different 20th century narrative than the one we know all too well.

We gather here, in December, 2017, under the slogan, 'Peace through Law,' in part as an after-effect of long-ago conjurations like those of the group who commissioned this artwork of December, 1913. The French *Association de la Paix par le Droit* was, as far as I can determine, the first group to gather under that slogan. It was founded in Nîmes, in 1887, by six *lycéens*, all offspring of staunch Protestant families.[1] The Association's foundational meeting itself presents something of an archetypal scene. It transpires in the kitchen of one of the *lycéens*' widowed mother and ailing grandmother, the latter a 'fervent Huguenot.' In the manner of idealistic youth, the founders draft a simple, but radical, two-article program: the 'suppression of all permanent armies' and the 'constitution of an international arbitrage tribunal.' This primal scene prefigures the engraving by Galland, commissioned on the eve of the catastrophe that would decisively inflect the ideals of the Association. At this founding moment, however, the two-article program stands as a discursive equivalent of Galland's image of the cherub and ephebe. Both depict a campaign of Peace-through-Law as something that comes *after* war: first to disarm the warriors, then to inaugurate a peaceful era governed by law.

From these simple beginnings, the Association steadily grew into an influential force in mainstream French political debate, attracting thousands of members, and publishing major French public intellectuals in its jour-

1 Ernest Roussel, 'Les Origines de la Paix par le Droit' (January 1928) 38 La Paix par le Droit 10–11.

nal—including international lawyers like Georges Scelle and Charles Rousseau. Its position as the dominant forum for French pacifism in the interwar period may have only been made possible, though, by a change in the meaning of that pacifism wrought by the Association's response to World War I. Like most other center-left groups in Europe, the Association supported the war, particularly the oft-repeated assertion by the Entente Powers that they were fighting a 'war of law.' Already in November, 1914, Théodor Ruyssen, the president of the Association, proclaimed, '[T]his war is … a war against war … The cause of France and its allies is truly the cause of law and liberty.' In April, 1918, the philosopher Gustave Belot wrote in the Association's journal, '[T]he true idea of Pacifism is that of a *Regime of International Law*, which the state of war can in no way annul, but, on the contrary, specifies and stimulates…'[2]

These pronouncements present a very different idea of the role of law than do the founding myths of the Association: rather than a force external to war, coming after violence to disarm and govern, it is inextricably bound up with war. Indeed, war may even be required to construct law, serving to 'specify and stimulate' it, by transforming the *dramatis personae* on the world stage: in Galland's archetypal imagery, converting the Warrior into a Tiller of the Soil. The *dramatis personae* necessary for an unfolding of a historical drama structured by law do not come by an act of grace from a mythological elsewhere; rather, their forceful construction is an indispensable prerequisite for that drama, its *hors-scène* prehistory.

The tenacious idea that law comes *after* war, as measured reason follows unbridled passion, is a powerful myth, expressed even by those who have reason to know better. In his magisterial 1939 opus, *The International Experiment of Upper Silesia*, Georges Kaeckenbeeck described the 1922 Geneva Convention for that region thus: 'The elimination of chaos and violence through legal order and legal process was its purpose.'[3] The 'chaos and vio-

2 Gustave Belot, 'Encore le Mot Pacifisme' (April 1918) 28 La Paix par le Droit 109.

3 Georges Kaeckenbeeck, *The International Experiment of Upper Silesia* (OUP 1942) 25. I note that I have gradually developed many of the arguments that have culminated in this paper in a long series of studies. Many of these have been collected in Nathaniel Berman, *Passion and Ambivalence: Colonialism, Nationalism, and International Law* (Brill 2011). Other studies of mine particularly relevant to this paper are Nathaniel Berman, '"The Appeals of the Orient": Colonized Desire and the War of the Riff' in Karen Knop (ed), *Gender and Human Rights* (OUP 2004) and Nathaniel Berman, 'The International Law of Nationalism: Group Identity and Legal History' in David Wippman (ed), *International Law and Ethnic Conflict* (Cornell University Press1997). In the last-named of these studies, I developed the notion of 'protagonist-positions,' a forerunner of the notion of '*dramatis personae*' that I use here.

lence' evoked by Kaeckenbeeck were those of World War I and the ethnonationalist civil strife in Upper Silesia that followed in its wake. The complex 'international experiment' constructed by the Geneva Convention sought to impose the 'solid basis of legal principle' upon the 'elemental forces' of 'nationalist passion.'[4]

However, the seeming homologies between the three oppositions—internationalism/nationalism, law/passion, and peace/violence—do not suit the complex story of Upper Silesia after the War, as Kaeckenbeeck's own narrative demonstrates. The immediate post-war story of Upper Silesia comprised a complex dialectic of discourse and violence, of both internationalist and nationalist origin. The Versailles Treaty provided for a plebiscite for the region, an attempt to provide a rational way to resolve its tangle of ethnic, linguistic, national, and religious identities. However, Kaeckenbeeck declares:

> Though the decision to hold a plebiscite had an appearance of principle, it was in reality a *pis aller* … [It] became the signal for a veritable orgy of propaganda and polemics; the right of self-determination was met by the organization of all manner of pressure … [I]nsurrection and self-help soon became rampant …[5]

Moreover, after the plebiscite, the international community, a *dramatis persona* played in this context variously by a Committee of Experts, the Council of the League of Nations, and the Supreme Allied Council, ordered the partition of the region between Germany and Poland, to be followed by the conclusion of a treaty between the two states. Kaeckenbeeck described the internationally-mandated partition as a 'dangerous political operation' for which the similarly mandated Geneva Convention 'prescribed a regime of convalescence.'[6]

The dialectic between peace and violence, which one might have thought was homologous to that between the international community and nationalist forces, thus proves to be internal to the international itself. The 'regime of convalescence' of the international legal regime sought to heal the 'dangerous operation' of the international political decision, itself taken in the wake of the plebiscite mandated by the Treaty—a plebsicite whose imminence, Kaeckenbeeck argues, had itself inflamed the internecine violence. Ironically, the very plebiscite that sought to determine

4 Kaeckenbeeck (n 3) 361.
5 ibid, 112.
6 ibid, 23.

the identity of the Upper Silesian 'self' played a major role in dividing the hybrid Upper Silesian population between German and Polish ethno-national 'selves,' which the subsequent international legal regime would attempt once again to bring into harmony. This complex story of conflict and pacification was thus repeatedly reshaped by the *personae* whose contours and even existence were shaped by international legal and political texts and practice.

## 2. *A Dramatic Gesture*

To choose 'Peace through Law' as the title of a conference about the Versailles Treaty is a dramatic gesture. The most common view of the Versailles Treaty is that it did anything *but* bring about peace, let alone 'through law.' The title, 'Peace through Law,' therefore, is dramatic in both the metaphorical and literal senses of the word. It is a surprise, a provocation, a defiance of conventional wisdom—the metaphorical sense of 'dramatic.' But it also sets up a more literally dramatic, even theatrical, tension for our meeting: how will the organizers, the speakers, the participants vindicate the hypothesis announced in the title, how will they respond to the inevitable retorts about the brevity of the peace that followed the treaty's signing? One cannot help but surmise that the organizers consciously intended that this dramatic tension set the tone of our proceedings, that a certain frisson pervade our discussions, as we cast our gaze on a legal and political drama that, in retrospect, seems to have been a tragic tale culminating in unspeakable horror.

Whenever scholars—of law, history, or politics—cast their gaze on the Versailles regime, as they have done repeatedly over the past century, they endeavor to provide novel insight into its guiding conceptions and institutional details and to draw enduringly edifying lessons from their fate. That all know the circumstances attending the demise of the regime does not diminish these aspirations. The classical Greek tragedians, after all, demonstrated their art primarily by their creative presentation of mythical tales known to all, not by varying the outcomes. A portrayal of an Oedipus who had courteously made way for his father at the crossroad might have offered a cheery account of the avoidance of disaster, but would not have served for millennia as an inexhaustible resource of aesthetic, moral, and psychoanalytic reflection, a goad for countless re-tellings.

Rather than essaying a retelling of the entire story of the Versailles regime, I will focus, as hinted above, on its narrative precondition, the frame of any drama: the construction of the *dramatis personae*, the charac-

ters to be set in motion by the tale. When a drama appears in written form, the list of *dramatis personae* appears on the page that precedes the action. It does not form a part of the drama itself, but without it the drama cannot go forward. Indeed, at least according to some theorists, particularly those under Hegelian influence, the construction of the *dramatis personae* largely predetermines the course of a drama. The characters of Oedipus and Hamlet govern the unfolding of their respective tragedies, even if their respective classical and modern configurations lead them to do so in divergent ways. And it is Oedipus and Hamlet who continue to structure the Western imagination, rather than the details of their stories.

Hence, I propose reformulating our optic on the Versailles treaties (a phrase in which I include the whole gamut of post-World War I treaties, wherever signed). I urge setting aside, at least as a first step, the effort to test the historical importance and enduring relevance of the treaties by their effectiveness in achieving 'dispute settlement.' Instead, I propose that we see the treaties as constructing the *dramatis personae* which have decisively shaped the world, and its disputes, ever since—the world in which we continue to live, the disputes in which we continue to engage. The treaties constructed the ensuing narrative of world history in which we ourselves figure on the list of *dramatis personae*—that is, to the extent that we had not already been constructed by the *lycéens* of Nîmes.

This perspective shifts the emphasis away from the efficacity or normative value of this or that particular technique of dispute settlement. Instead, it refocuses attention on the Versailles regime's construction of the enduring actors who have continued, with manifold variations, to play the roles designed by the dramaturges of Versailles. We may embrace or reject particular features of the Versailles regime, but we ineluctably act on its stage, the modern international stage. We are the players created by those who wrote, implemented, and interpreted the Versailles treaties. Versailles may not have settled our disputes, but it continues to decisively shape our participation in them.[7]

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7 I note that the field of 'law and performance' has been gradually growing over the past couple of decades, though generally along lines quite different than those I pursue here. For a sense of the range of this scholarship, see, eg, Julie Stone Peters, 'Law as Performance: Historical Interpretation, Objects, Lexicons, and Other Methodological Problems' in Elizabeth S Anker and Bernadette Meyler (eds), *New Directions in Law and Literature* (OUP 2017); Lucy Finchett-Maddock, *Protest, Property and the Commons: Performances of Law and Resistance* (Routledge 2016); Alan Read, *Theatre and Law* (Palgrave 2015); Julie Stone Peters, 'Theatrocracy Unwired: Legal Performance in the Modern Mediasphere' (2014) 26 Law & Literature 31;

Before proceeding, I present a selected list of the most prominent of these *dramatis personae*, along with their key legal claims:

- National states, purporting to embody pre-existing nations, with claims to full sovereignty
- Peoples or nations seeking self-determination
- Minority groups with internationally proclaimed civil and cultural rights for 'persons belonging to' those groups
- Internationalized territories with internationally defined 'inhabitants'
- 'Not-yet-able' peoples under League mandate, whose welfare forms a 'sacred trust of civilization'
- 'Advanced Nations' responsible for the welfare of 'not-yet-able' peoples
- The International Community, embodied in a variety of internationalist institutions and individuals

These *personae* are familiar to all, whether or not one has the training to recognize them as legal categories. These *personae*, and other, newer ones, such as internationally recognized indigenous peoples, structure our world to such an extent that they can even come to seem like natural persons rather than legal constructs.

### 3. *The* Dramatis Personae *and the Actors: Dynamics and Indeterminacy*

If my project is both possible and urgent today, it is because we live in a world undergoing destabilization. The internationally constructed identities through which we have come to recognize ourselves and others can no longer be taken for granted. The widespread sense of destabilization in this latter part of the second decade of the 21st century, moreover, comes only a generation after the last major destabilization, wrought by the fall of the Berlin Wall. I need not belabour here the reasons for the current sense of

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Joshua Takano Chambers-Letson, *A Race So Different: Performance and Law in Asian America* (New York University Press 2013); Martha M Umphrey 'Law in Drag: Trials and Legal Performativity' (2012) 21 Columbia Journal of Gender and the Law 114; Catherine M Cole, *Performing South Africa's Truth Commission: Stages of Transition* (Indiana University Press 2010); Julie Stone Peters, 'Legal Performance Good and Bad' (2008) Law, Culture and the Humanities 179; Robin Chapman Stacey, *Dark Speech: The Performance of Law in Early Ireland* (University of Pennsylvania Press 2007).

destabilization, the myriad upheavals in the US, Europe, the Middle East, Africa, and elsewhere. But I maintain that it is at such times of destabilization, when the basic structures of our world appear to be bursting apart, when our taken-for-granted identities are put into question, that we can reflect on their origins and meanings. It is at such moments when we can observe ourselves, become something like the anthropologists of our own societies.

In 1974, the anthropologist Clifford Geertz published an important, if unfortunately entitled, article, 'From the Native's Point of View : On the Nature of Anthropological Understanding.'[8] Geertz presents an alternative to the impasse between empathy and analytical distance as the primary stance of the ethnographer. Rather, he declares, the latter should seek to determine how human beings 'define themselves as persons, what enters into the idea they have (but … only half-realize they have) of what a self … is.'[9] The achievement of this task requires 'searching out and analyzing the symbolic forms—words, images, institutions, behaviors—in terms of which, in each place, people actually represent themselves to themselves and to one another.'[10]

Turning to the Balinese, a people among whom Geertz spent considerable time, or rather, to what he saw as the 'never-changing pageant that is Balinese life,' Geertz writes:

> The Balinese have at least a half dozen major sorts of labels, ascriptive, fixed, and absolute, which one person can apply to another (or, of course, to himself) to place him among his fellows. … To apply one of these designations or titles (or, as is more common, several at once) to a person is to define him as a determinate point in a fixed pattern, as the *temporary occupant of a particular, quite untemporary, cultural locus*.[11]

The term Geertz favors for these 'cultural loci,' provisionally occupied by individuals, is, indeed, *dramatis personae*.

> It is *dramatis personae*, not actors, that endure; indeed, it is *dramatis personae*, not actors, that in the proper sense really exist. Physically men come and go … But the masks they wear, the stage they occupy, the

8 Clifford Geertz, 'From the Native's Point of View': On the Nature of Anthropological Understanding' (October 1974) 28 Bulletin of the American Academy of Arts and Sciences 26.
9 ibid 30.
10 ibid.
11 ibid 35.

> parts they play, and, most important, the spectacle they mount remain and comprise not the façade but the substance of things, not least the self.[12]

Geertz's depiction of the enduring power of the *dramatis personae* of Balinese society illuminates the enduring power I attribute to the *dramatis personae* of the Versailles regime—as well as to the shifting multiplicity of roles particular actors can play. One can readily, for example, think of a number of groups who have spent all or part of the past century cycling through a wide range of such *personae*. In the first half of the twentieth century, for example, the 'Sudeten Germans,' or portions of that population, successively played the roles of the following *dramatis personae*: a part of an empire's *Staatsvolk* prior to 1914, one of the legion of self-determination aspirants at the Paris Peace Conference in 1919, an internationally protected minority in the 1920s, again a self-determination aspirant in the early 1930s, agents of an irredentist foreign power in the mid-1930s, part of the majority of a racial-nationalist state from 1938–1945, and a group of expelled refugees with international claims after 1945. One can list a similarly wide range of *dramatis personae* played by other groups, such as the Jews, the Kurds, the Palestinians, and so on.

I immediately note that the way I have just portrayed this phenomenon is itself misleading, for terms like the 'Sudeten Germans,' 'Jews,' and so on, do not name stable, let alone natural, human collectivities that proceed to take on a variety of artificial roles. Rather, such terms simply bring us to another layer of *dramatis personae*, each with its genealogical layers of construction and reconstruction. From this perspective, in which *dramatis personae* 'comprise not the façade but the substance of things, not least the self,' there is no collective self, no natural 'actor,' which stands outside the shifting occupation of various 'cultural loci.'

To be sure, groups, as well as individuals, may at times deliberately, even cynically, mask themselves in available *personae* for instrumental purposes. As a result, when confronted by any particular affirmation of group identity, one may wonder whether one faces an instrumentally assumed, rather than a constitutive, *persona*. Indeed, partisans in ethno-national conflicts commonly accuse their opponents of not authentically incarnating the *dramatis persona* to which they claim title, particularly that of a 'nation' or 'people.'

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12 ibid.

Judith Butler expresses this alternative thus:

> Does this mean that one puts on a mask or *persona*, that there is a 'one' who precedes that 'putting on,' …? Or does this miming, this impersonating, precede and form the 'one,' operating as its formative precondition rather than its dispensable artifice?[13]

Butler's emphasis is on the latter, the constitutive effect of 'impersonation.' She is, nonetheless, also attuned to its former, voluntaristic, sense, that of instrumental masking, especially for political purposes. In the legal arena, one might call the instrumental use a 'litigation strategy'; in the political arena, an act of 'propaganda.' In any particular case, discerning the difference between constitutive and instrumental acts of self-presentation may be difficult to determine, indeed may remain indeterminate even for the group itself. The intractability of this indeterminacy is underscored if one maintains, as would Butler, that any such instrumental masking is itself undertaken by a *dramatis persona*.

### *4. The Agon of the Personae*

Key texts from the interwar period give an acute sense of the constitutive, yet constructed, quality of the Versailles *personae*, as well as their complex imbrication with each other. It is not only the case that, as in the 'Balinese pageant' of Geertz's telling, actors on the international stage may assume a variety of *dramatis personae*. Rather, the *dramatis personae* themselves engage in a variety of relationships with each other, including both complementarity and competition. They may reciprocally legitimate each other, or, on the contrary, usurp each other's authority, often through rhetorical maneuvers such as irony and parody.

Consider, for example, the Preamble to a treaty signed the same day as the Versailles Treaty, variously, and symptomatically, known as the 'Treaty of Peace with Poland,' the 'Polish Minority Protection Treaty,' and the 'Little Treaty of Versailles':

> Whereas the Allied and Associated Powers have by the success of their arms restored to the Polish nation the independence of which it had been unjustly deprived …

13 Judith Butler, 'Critically Queer' in Julian Wolfreys (ed), *Literary Theories: A Reader and Guide* (New York University Press 1999) 575.

> The [Allied and Associated Powers], … confirming their recognition of the Polish State, … as a sovereign and independent member of the family of nations, and being anxious to ensure the execution of…[Versailles Treaty] Article 93 …[14]

On the one hand, we might read this Preamble as casting the 'Polish nation' as a natural, pre-existing entity, one which had been 'unjustly deprived' of its independence. This reading justifies the notion that the text is a 'Treaty of Peace *with Poland*', with a Poland that pre-exists the treaty. On the other hand, we might focus on the Preamble's emphasis that Poland owes its newfound independence to the Allies, literally to 'the success of their arms'—implying that this independence is a product of the newly founded international community, even the first-born progeny of the emergent 'family of nations.' Read together with the text's express citation of Versailles Article 93, these phrases justify the appellation, the 'Little Treaty of Versailles'—whose namesake was concerned, above all, with the construction of a new international community. Finally, we might foreground the primary substantive content of the Treaty, which, in fulfillment of Versailles Article 93, protects members of 'racial, religious or linguistic minorities'—justifying its third, and most common, name, the 'Polish Minority Protection Treaty.' The treaty, in short, proclaims the existence of four of Versailles' main *dramatis personae*: national states, nations, minorities, and the international community. It does so, however, in such a way that highlights their constructedness—even their conjuring up by the text itself—and their irreducible dependence on each other.

The Preamble and the treaty's primary content underscore the constitutive, rather than merely instrumental, function of the international *dramatis personae*. This constitutive function makes it impossible to name the group that 'puts on' the dramatic *persona* without referring *ad infinitum* to previously donned *personae*—a feature particularly evident in relation to the 'minorities' who formed the main substantive concern of the treaty. For example, the group known in 1919 as the 'German minority' of Poland was formerly part of the *Staatsvolk* of the Prussian and Austrian empires. Only as a result of the War do its members become primarily an ethnic group defined by their German language, and become legally constructed as an internationally protected 'minority.' This shift exemplifies the notion I have advanced that both the existence of many of the Versailles *personae*

14 Treaty Between the Principal Allied and Associated Powers and Poland (signed 28 June 1919, entered into force 10 January 1920) 112 BSP 232.

and the 'occupation' of these 'cultural loci' by particular groups issue from the War that 'stimulated and specified them.'

The reciprocal dependence of distinct principles, which I have highlighted in discussing the Polish treaty's Preamble, does not suffice to portray the complexity of the inter-relationships of the *dramatis personae*. Rather, the *dramatis personae* often shadow each other, limit each other, compete with each other, even undermine each other. These struggles often occur on the concrete terrain of political, cultural, and military conflicts, but they always have a discursive dimension, an acceptance or contestation of the list of *dramatis personae* and of which groups should occupy particular 'cultural loci.' Since my primary archive in this essay is composed of texts, I focus on this discursive dimension, as expressed by scholars, jurists, official documents, and political leaders.

The following proclamation from CA Macartney, one of the foremost interwar experts on international minority rights, renders explicit the agonistic potential lurking in the seemingly static list of *dramatis personae*:

> The [Minority Protection] Treaties [seek] to put an end to the whole movement towards so-called national self-determination … in favor of a true 'self-determination' based on feelings of political loyalty.[15]

Macartney here expresses a variant of a widely held view concerning the primary purpose of the minority protection treaties—viz, that they primarily sought to secure the loyalty of the minority groups to the states of their new citizenship. Macartney's distinctive formulation foregrounds the rivalry between two *personae*, that of 'nations' and 'minorities.' He approvingly anticipates the dominance of the latter, to be achieved by its salutary usurpation of the phrase denoting the deepest aspiration of the former: the usurpation of 'national self-determination,' in which the primary *persona* is the 'nation' with normative primacy over the state, by 'a true "self-determination,"' in which the primary *persona* is the state with normative primacy over the nation. The scare-quotes around 'self-determination' show that this linguistic, as well as legal and political, usurpation is a kind of deliberate 'impersonation' of one category by the other. Such 'impersonation' demotes the usurped category into something one no longer takes fully seriously—in short, a subversive parody. I will return to a very different use of such subversive parody later in this paper.

A resolution adopted by the Council of the League in 1923 enables us to witness, *en direct*, the legal construction of McCartney's favored *persona*,

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15 CA Macartney, *National States and National Minorities* (OUP 1934) 278.

the internationally protected minority group. The resolution laid down the conditions for admissibility to the League of petitions for redress submitted by such groups.[16] Among other conditions, the resolution declared:

> …(b) in particular, they must not be submitted in the form of a request for the severance of political relations between the minority in question and the state of which it forms part;
> (c) they must not emanate from an anonymous or unauthenticated source;
> (d) they must abstain from violent language …

This historically contingent construction is so familiar that it may seem to many a description of a natural entity. The 'minority' *persona* cannot, by definition, ask for political independence. It must also be willing to name itself, to present openly its identity papers for scrutiny by the agents of power. It must, finally, engage only in civil, one might say, 'civilized,' discourse. These conditions take on particular poignancy when one considers the newness of the 'minority' *persona*, both generally (despite its foreshadowings in the late 19th century) and in relation to the particular actors who assumed this role. The Versailles-constructed minority *persona* required the reconstruction of the identities of millions of people in central and eastern Europe, their 'impersonation' of a new *persona*. Appearance on the Versailles stage required these groups to name themselves as subjects structured by these international demands.

The Council resolution provides a quintessential example of the pervasive mechanism of identity-formation called 'interpellation' by Althusser: the 'hailing' of individuals by an agent of power and their subsequent recognition of themselves in the identities thus imposed upon them.[17] In laying down conditions for the authorial voice of the *persona*, 'minority,' the Council constructs the conditions for *existing* as a 'minority' on the international stage.

I turn to two other novel Versailles constructions, an examination of whose similarities and differences both with each other and with precursor legal regimes sheds crucial light on the agonistic relationships of the treaties' *personae*. I refer to the territories within Europe placed under a va-

16 Resolution of the Council of the League of Nations, September 5, 1923. See Report by M de Rio Branco, and Resolutions adopted by the Council on September 5th, 1923, Council Document C 552 (1). 1923. I, 1, 6.

17 See Louis Althusser, 'Ideology and Ideological State Apparatuses (Notes towards an Investigation)' in Althusser, *Lenin and Philosophy and Other Essays* (Verso 1970) 11.

riety of forms of international governance, whose purest form was the League government for the Saar, and the non-European territories placed under League mandate, whose governance was entrusted to 'advanced nations' as a 'sacred trust of civilization.' Both constructions effected various forms of an internationalization of territory, legal regimes wholly or partially outside the state system.

Both kinds of regimes sought novel solutions to conflicts between incompatible territorial claims and principles. In the internationalized European territories, these conflicts arose from: clashes between the ethnic identity of the population and economically-motivated claims by neighboring states (the Saar and Danzig); the hybrid and contested ethnic identity of the population (Upper Silesia); and competing historical claims (all three of the territories). In the non-European territories, all regions wrested from the defeated and collapsed pre-War empires (Ottoman and German), the colonial ambitions of the French and British Empires conflicted with the internationalizing and self-determinationist élan of Wilsonian and European reformists. Both kinds of regimes imposed various forms of government by non-local rulers; both were, consequently, shadowed by accusations of imperial or colonial rule in internationalist mask; and both sought to differentiate themselves from such critiques, indeed to achieve legitimacy precisely through such differentiation.

Legal partisans of both kinds of regimes portrayed them as coexisting with the 'normal' allocation of territory to sovereigns. One way of describing this co-existence was that state sovereignty over such territories was 'in abeyance.' This term appears in relation to the Saar in a major early 1920s work on the Versailles Treaty, as well as in a key 1950 portrayal of the Mandate System by ICJ Judge Arnold McNair.[18]

The notion that the allocation of territory to sovereigns was merely 'in abeyance' reinforces the sense of the constructed and provisional quality of the internationalized territories and their associated *personae*. It is all the more striking, therefore, that the partisans of these regimes celebrated them as the crowning achievements of the Versailles system—a status to which they were entitled precisely by virtue of their departure from the traditional legal notions of statehood which many held responsible for the catastrophe of the War.

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18 On the Saar, see HWV Temperley, *A History of the Peace Conference of Paris*, vol. 2 (Henry Frowde 1920) 180. On the Mandate System, see *International status of South-West Africa* (Advisory Opinion) 1950 ICJ Rep 128, 150 (sep op McNair).

In the introduction to his remarkable 1925 monograph on the Saar regime, Henri Coursier expresses this common held view:

> To the 'anarchy of Sovereignties,' an anarchy allowed, indeed, by public law since the formation of modern states and whose most disastrous consequence was the 'unlimited right of war,' the Covenant of the League of Nations substitutes an international organization which, without abolishing individual sovereignties, limits the exercise of their freedom by justice.[19]

While this passage refers to the creation of the League itself, many saw the internationalized territories as the ultimate expression of this 'substitution.' In the words of a 1920 League report on the Saar:

> The appointment of a Governing Commission of a State created under the auspices of the League of Nations will be the first characteristic act of the League after leaving its theoretical existence to enter upon its practical life. It constitutes, so to speak, the incarnation of the lofty principles that inspired its creation and which are to guide its work of pacification and later of organisation and adjustment.[20]

This ultimate 'incarnation' of the League nonetheless left the normal sovereign structure intact, perhaps proving its superiority precisely by contrast with that structure:

> In relation to the Saar, the drafters of the Treaty … did not claim to modify *de jure* the juridical concepts of Sovereignty, Statehood, Nationality, [and] State Property … [T]hey simply instituted the … *international personality* … of the Governing Commission. The latter has completed its oeuvre by promulgating … the status of an 'inhabitant of the Saar.' And thus the Territory of the Saar was organized as a *de facto* State [*État de fait*].[21]

Over vociferous and repeated German objections, the Governing Commission proceeded with 'determination' toward the goal of the 'constitution of a Sarroise political personality [*l'individualité politique sarroise*]'.[22] Coursier thus proclaims the construction of a key *dramatis persona* of the Versailles system to be a self-conscious act by internationalist authorities.

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19 Henri Coursier, *Le Statut International du Territoire de la Sarre* (Pedone 1925) 5.
20 'Report on the Saar Basin Presented by Monsieur Caclamanos' (1920) 2 LNOJ 45, 49.
21 Coursier (n 19) 35–36 (emphasis added).
22 ibid 104.

I emphasize the two key *personae* to emerge from this 'constitution': the Saar as a new kind of polity and its people as a new kind of collectivity. First, the Governing Commission, through a series of acts and decrees, established the Saar as a new kind of 'state,' even if a '*de facto* state.' The Governing Commission, for example, secured the Saar's adherence to international conventions, despite its non-conformity with traditional notions of statehood—a key symbol of the establishment of the Saar as an international *persona*.[23]

Second, the Governing Commission established a new international legal status for those residing within the Saar, under the seemingly anodyne phrase, 'inhabitant of the Saar.' Just as the status of sovereignty over the Saar had not formally been altered, neither had the citizenship status of its residents. Nonetheless, in a 1921 ordinance, the Commission declared that 'all inhabitants of the Territory of the Saar, whatever their nationality, are equal before the law in the Territory.'[24] This ordinance effected a change in the prevailing (German) law, which limited to citizens the various rights traditionally predicated upon political allegiance, such as participation in certain organs of local government. In defiance of the German position that the Versailles Treaty phrase 'inhabitant of the Saar' was merely an empirical description of those living in the region, the Commission declared that the 'status of "inhabitant of the Saar" constitutes a *new kind of legal subject*'.[25]

The Saar regime thus introduced two new *dramatis personae* on the international stage: the internationalized '*de facto* State of the Saar' and the internationalized human beings, the 'new legal subjects,' called the 'inhabitants of the Saar.' The partisans of the Saar regime fully acknowledged that the 'Saar Territory, as determined by the Treaty, has no roots in the past and is, politically, a purely artificial creation.'[26] Yet it was precisely this 'artificial' regime that was said to 'constitute at once the most complete and the most solidly constructed of all the experiments in international government.'[27] My one gloss here would be to affirm that to characterize as 'artificial' the *personae* of the '*de facto* State of the Saar' and 'inhabitants of the Saar' is misleading if one intends thereby to contrast them with the purported 'naturalness' of *personae* like 'Poland,' the 'Polish nation' and the

23 See ibid 79–82.
24 ibid 98 (quoting Ordonnance portant définition de la qualité d'habitant de la Sarre [15 June 1921] Journal officiel de la Commission de Gouvernment, art 1).
25 ibid 99 (emphasis added).
26 Michael T Florinsky, *The Saar Struggle* (Macmillan 1934) 11.
27 Coursier (n 19) 37.

'German minority.' Rather, all the *personae* ushered onto the stage of the Versailles drama were, and remain, contingent, though enduring, constructions.

I turn to the Mandate System, another bold innovation in international governance, at least in its founding documents and legitimating texts. To be sure, the mandates' genealogy in colonialism, particularly reformist colonialist projects of the late 19th century, made them seem less of a break with the past than the Saar regime. Nonetheless, it was precisely in their supposed contrast with their proximate colonialist precursor that many saw their superior legitimacy. Indeed, what could be more attractive to the internationalist imagination than a government by idealistic agents of the international community, conscious of their task to fulfill the 'sacred trust of civilization'? These features are highlighted in Judge McNair's crucial portrayal in his separate opinion in the 1950 *Southwest Africa Case*.

In addition to the Mandate System itself, McNair focuses on two *personae* homologous to those I have highlighted in relation to the Saar: the Mandatory government and the people under mandate. In McNair's formulation, the mandate was a 'new international institution,'[28] which established

> a new relationship between territory and its inhabitants on the one hand and the government which represents them internationally on the other—a new species of international government, which does not fit into the old conception of sovereignty and which is alien to it … Sovereignty over a Mandated Territory is in abeyance …[29]

The creation of the Mandate System thus created three *personae* on the international stage. First, it created the 'new institution' itself. Its very name was an international innovation, borrowed, but only through an imperfect analogy, from private law.[30] Second, it created the *persona* of the Mandatory Power, a state charged with administering territory on behalf of 'civilization.' Versailles Article 22 defined such states as 'advanced nations'—*personae* familiar from the colonial stage, but newly defined and internationally codified. The system's partisans described the Mandatory Powers as something like functionaries of the international community. The Mandatory Power's rights are 'tools given to him in order to achieve the work assigned

28 *Southwest Africa Case*, sep op McNair (n 18).
29 ibid 150.
30 ibid 148–149.

to him'; he has 'all the tools necessary for such end, but only those.'[31] The subjection of the conduct of the mandate to international scrutiny was often taken as the sign of the difference of this 'new institution' from colonial sovereignty. The Court in the *Southwest Africa Case* emphasized this feature by deciding that this subjection survived the demise of the League —in fulfillment of Geertz's notion of the endurance of the *dramatis personae*, in contrast with their always-provisional actors.

Article 22 also created the new *persona* of the peoples under Mandatory rule: 'peoples not yet able to stand by themselves under the strenuous conditions of the modern world.' Like every other term associated with the Mandate System, this phrase, while an obvious progeny of colonial discourse, sought its legitimacy precisely in its difference from its analogues in that discourse. In contrast with the essentialist racism of the conceptualization of the colonized in most colonial discourse, Article 22 constructs what we could call a 'provisional racism.' The 'not yet' suggests an eventual emergence of this new category of peoples into full membership in the international community. [32] The provisionality of its racism could even allow the Mandate System's advocates to deny the racist dimension, arguing that the 'not yet' was subject to some form of objective empirical evaluation.[33]

From this perspective, we can discern an implicit legitimating function in the contrast between the peoples under 'A,' 'B,' and 'C' mandates, three sub-*personae* created by the Mandate System. Article 22 called for 'provisional' recognition of the peoples under 'A' mandates as 'independent nations,' albeit 'subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone.' The prospect of imminent independence for the 'A' peoples highlights the contrast with the 'B' and 'C' peoples, for whom the Article mentions no path

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31 JL Brierley, 'Mandates and Trusts' (1929) 10 BYIL 217, 219 (quoting Pierre Lapaulle, 'An Outsider's View-point of the Nature of Trusts' [1928-1929] 14 Cornell Law Quarterly 52, 61).

32 Antony Anghie's seminal analysis of Vittoria persuasively argues that a form of the provisional racism of the 'not yet' constitutes a central strand of colonial ideology as early as the 16th century. See 'Franscisco de Vittoria and the Colonial Origins of International Law' (1996) 5 Social and Legal Studies 321. However, this early notion concerned the possible acquisition of 'civilization' by the colonized as individuals, rather than as nations, excluding any re-acquisition of national sovereignty. The latter notion only begins to appear in the late 19th and early 20th century in the reformist strands of colonial ideology, as in certain French interpretations of the protectorates over Tunisia and Morocco.

33 See, eg, Walter H Ritsher, 'What Constitutes Readiness for Independence?' (February 1932) 26 American Political Science Review 112–122.

to independence. This contrast serves to give a certain 'reality effect' to the 'not-yet-ness' of the 'A' mandates. The contrast between the essentialist racism directed at the colonized under colonialism and the provisional racism of the 'not yet' *personae* under the Mandate System is thus replicated within the latter itself.

Regimes like the Saar and the mandates shared a dynamic conception of the new *personae* created for their respective populations. The construction of the 'not yet' *persona* for peoples under mandate explicitly incorporated this dynamism from the start, although it seemed only seriously intended for the 'A' peoples. The dynamism of the *persona*, 'inhabitant of the Saar,' was an artifact of the imaginative activity of the Governing Commissioners, for whom the identity of the people in the Saar was malleable. The Commissioners codified their refusal to treat the category as a merely empirical description in a series of legal provisions concretizing the notion that 'inhabitant of the Saar' constituted a new 'legal status.' Moreover, they sought to create a culture in the Saar that would make it plausible that these legally constructed 'inhabitants' would vote for the continuation of the League regime in the 1935 plebiscite. The Governing Commission thus took its subjectivity-constructive activity very seriously—even if unsuccessfully, as the 1935 plebiscite, which decided in favor of unification with Nazi Germany, demonstrated.

## *5. Dramatic Anomalies*

The two regimes' respective defects and failures aside, their proponents envisioned them as potentially creating unprecedented legal and political forms, inhabited by utterly novel *dramatis personae*. They viewed them as foreshadowing a world in which rulers governed as trustees of civilization, rather than as power-hungry sovereigns, and people would see their primary allegiance as due to the international community, rather than narrowly national states. This vision would culminate in a completely different world stage, one which would leave the old *personae* in permanent 'abeyance.' However, the defects and failures of both kinds of regimes also reveal the extent to which any authoritative construction of *dramatis personae*, even if ideal in the eyes of its architects, inevitably leaves out many important roles, mis-casts many groups, and provokes resistance.

Indeed, we can find a striking verification of the decisive importance of the Versailles construction of *dramatis personae* precisely by turning to a key form of resistance to it: colonized peoples claiming a place on the international stage in defiance of the authorized list of *personae*. The War of the

Rif of the 1920s, a revolt by the Berber people of the Rif mountains against Spanish and French colonial rule, provides the clearest example of this phenomenon. By 1912, Spain and France had formalized their increasing control over Morocco, dividing the country between them in colonial 'protectorates.' The Rif region, on the border between the French and Spanish zones, had historically resisted outside domination, whether by the Moroccan central government or by Europeans. In the early 1920s, rebels led by Mohamed ben Abd el-Krim el-Khattabi (known popularly as Abd el-Krim) fought a highly successful battle against Spanish control. By mid-1925, French attempts to reinforce the colonial division of Morocco brought them into full-scale war with the Riffans. The war provoked vigorous cultural and political contestation in France. The rebels also garnered widespread international solidarity, from Latin America to Indonesia. The French conducted their war against the Riffans in a particularly inhumane fashion.

The brutality of the French campaign brought some on the French center-left to place their hope in international intervention. The French Human Rights League sought an opinion from Georges Scelle about the legal possibility of League of Nations action to stop the carnage. Scelle responded, however, that the League of Nations had 'no competence at all in the Moroccan affair.'[34] As a conflict within a French protectorate, the War of the Rif, as well as all of its non-state participants, simply had no existence on the international stage.

> The Rif, the Riffans, Abd el-Krim, have no international personality of any degree. Morocco is a country under protectorate with two protecting States and the League of Nations has no capacity to intervene in the domain of a protectorate ... [L]egally, one cannot even say that there is a war… [35]

This 'non-existence' of the Riffans and their charismatic and increasingly world-famous leader strikingly confirms Geertz's dictum that 'it is *dramatis personae*, not actors, that in the proper sense really exist.' Even the war itself could not appear on the international stage, regardless of how much deadly firepower was directed against the Riffans.

In 1925, there simply was no international legal *dramatis persona* for a non-European people fighting for self-determination. More than three

34 'Rapport de M. Georges Scelle' (1925) 25 Les Cahiers des droits de l'homme 496 (emphasis added).

35 ibid (emphasis added).

decades would pass before that *dramatis persona* would be authoritatively included in the international legal drama—or, to use technical international legal language, for anti-colonial self-determination to ripen into a right of customary international law.

The War of the Rif underscores the continency, constructedness, and contestability of the *personae* of the international drama. As all jurists know, international law develops in ways both centralized and decentralized, with the relative weight of these two poles varying over time. The construction of *dramatis personae* sometimes proceeds from above, as in the pronouncements of treaties and international organs. However, those *personae*, as well as the aptness of particular groups to play them, are subject to the re-appropriations, resistances, and diversions of people around the world. The Riffans were trying to introduce a new *persona* into the Versailles drama. Abd el-Krim tried to enclothe the Riffan cause with a number of *personae* in his many epistles to the world, his soliloquies on the international stage: from a secular Republic of the Rif to an Islamic Caliphate and much else in between. Abd el-Krim portrayed his failure as due to his having 'come too early'.[36] But eventually the 'anti-colonial combatant' would become a powerful *persona* on the international stage, one that would change the map of the world, a coveted role even at times claimed by those with dubious title to it.

For established legal opinion in 1925, however, the only way to bring the war's participants into 'existence' was to bring them under one of the authorized *dramatis personae*. Accordingly, Scelle, searching for a legal way to apply his humane ideals, declared:

> It is obviously regrettable that the [Versailles] Treaty does not cover all situations of this type … I have already wondered if, in the future, it would not be beneficial to transform the Rif into a territory under Mandate …[37]

Scelle here explicitly states the condition for these actors to appear on the international stage: their impersonation of one of the already authorized *dramatis personae*.

Scelle's opinion about the fatal anomalousness of the Riffans and its possible remedy was embedded in his overall vision of the Versailles drama. Ten years later, this vision continued to inform his response to crucial

36 See M Tahtah, *Entre Pragmatisme, Réformisme et Modernisme: Le rôle politico-religieux des Khattabi dans le Rif (Maroc) jusqu'à 1926* (Peeters 2000) 165.

37 ibid.

international events, specifically the Italian invasion of Ethiopia. The Italian invasion was, of course, a decisive event in the Versailles drama, the opening scene of its final act. While we can attribute the League's failure to take effective action to many factors, a central issue was Ethiopia's anomalousness within the Versailles construction of *dramatis personae*. The Versailles construction of 'Africa' placed the continent's peoples among those 'not advanced' enough for full membership in the international community, perhaps never destined to be 'ready' for the 'strenuous conditions of the modern world.' This racist construction of the *dramatis persona*, 'Africa,' stood in tension with the existence of an African state as a member of the League. Defenders of the Italian invasion foregrounded this inconsistency, stressing the illegitimate anomalousness of Ethiopian sovereignty.

Scelle vigorously condemned the Italian invasion. Nonetheless, he made it clear that his defense of Ethiopian sovereignty rested only on formal legal grounds, rather than on his distinctive sociological theory of law. On the level of principle, he agreed that Ethiopia's casting as a full member of the League was an anomaly on the international stage. Echoing his search for a remedy to the Riffan anomaly a decade earlier, he declared that a more proper casting for Ethiopia would have been as a mandated territory.

> Personally, we believe that it is one of the weaknesses of the conception of the Covenant of the League of Nations to have established in principle the identity of the legal and functional situation of all the member States … Taken in itself, the plan [proposed by a League committee to resolve the conflict] … comes close to the regime that it would have been reasonable to adopt from the start … It is a regime analogous to that of the mandates, apt to guide towards progressive emancipation those 'peoples not yet able to govern themselves' (art. XXII of the Covenant); … This system … would constitute an excellent formula … if it were not associated with the transformation [of Ethiopia] into an *Italian* Mandate.[38]

Scelle's position was thus very far from opposition to changing Ethiopia's international status. On the contrary, he declared the mis-casting of Ethiopia as a full League member to be a crucial blunder committed at the inception of the Versailles drama. He only objected to the proposed plan for resolving the conflict because it compounded that mis-casting with an additional one: the placing of a fascist state in the role of an 'advanced na-

38 Georges Scelle, 'La politique extérieure française et la S.D.N.' (1935) 10 Année politique française et étrangère 257, 282 (emphasis added).

tion.' The entrustment of the governance of Ethiopia to a truly 'advanced nation' would have been the ideal rectification of this anomaly in the Versailles drama. By 1935, however, it was too late for such fine-tuning.

## 6. *Destructive Parody*

I have shown that understanding international legal group identities as *dramatis personae* illuminates their contingent and constructed quality, the ways that they possess enduring power to shape the international drama and yet are subject to continual re-confirmation by the players on the stage or to being re-shaped and even resisted by them. Macartney's approving portrayal of the usurpation of 'self-determination' by proponents of minority rights provides a clear example of discursive *agon*, pitting one *dramatis persona* against another. Abd el-Krim's manifold efforts to enclothe the Riffan cause with a variety of conventional and unconventional *personae*, in an attempt to somehow place it on the world stage, provide examples of an attempted re-configuration of the Versailles list. Scelle's comments on the Rif and Ethiopia provide examples of an attempt to re-cast the actors to make them conform to an overall vision of the drama.

I turn now to the most effective, indeed deadly effective, re-appropriation of the *dramatis personae* of the Versailles drama: the Munich Accords of 1938.[39] Those seeking legal edification from the Versailles system rarely discuss the Munich Accords—except as a 'political' attack by Germany on law and the failure of political will by the West. If, however, all the Versailles *personae* are both contingent and constructed, subject to continual re-confirmation, re-appropriation, and resistance, we must fully acknowledge the Munich Accords as an integral part of the Versailles legal drama.

When read closely (and out of context), the Munich Accords have the power to startle us precisely due to their similarity to the Versailles treaties, rather than by any direct rejection of the Versailles principles. The Munich Accords do, of course, stage the penultimate scene of the closing act of the Versailles drama. They do not, however, attack it from without, but unfold one of its intrinsic possibilities. Far from renouncing the Versailles principles, they endorse them, even cite them for authority, all the while re-appropriating them in such a way as to empty them of their prior meaning.

39 Agreement for the Cession by Czechoslovakia to Germany of Sudeten German Territory, with Annex, and Declarations (done 29 September 1938) (1938) 142 BSP 438.

The Munich Accords are, in short, a close parody of Versailles, a parody undertaken with destructive intent.

A brief comparison of key Versailles principles with the Munich Accords should suffice to give a sense of this technique. The following is only a partial list of the overlap between the two:

a) Versailles Principle: division of territory predominantly according to the 'objective' principle of nationalities, anticipated in Wilson's call for the reconstitution of Poland on territory with 'indisputably Polish populations':[40]
b) Munich: paragraph 4 called for the cession by Czechovakia of 'predominantly German territory':
c) Versailles Principle: plebiscites to be held for territories whose national character was in dispute, implementing 'subjective self-determination,' as in the Saar and Upper Silesia;[41]
d) Munich: paragraph 5 provided for a plebiscite in territories not included in paragraph 4, 'taking as a basis the conditions of the Saar plebiscite'; these 'conditions' even included the occupation of the disputed territories by 'international bodies,' as in the Saar and Upper Silesia
e) Versailles Principle: treaties on minority rights as supplements to the main territorial divisions, as in Poland and all the new and 'greatly enlarged' states of central and eastern Europe;
f) Munich: two months after Munich, the Czechs and Germans concluded an agreement to protect their respective 'national minorities';[42]
g) Versailles Principle: international guarantee of territorial integrity to all recognized states, embodied in Article 10 of the Covenant;
h) Munich: an Annex to the Agreement bound the French and British to an immediate guarantee of the new Czech border.

In imitating, even citing, the Versailles Treaty, the Munich Accords effected a plot twist within the Versailles drama rather than a break from it. In Aris-

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40 Woodrow Wilson, 'The Fourteen Points Address' (1918) in Arthur S Link (ed) *The Papers of Woodrow Wilson*, vol 45 (Princeton 1984) 536, 539.

41 For the provisions for the Saar Plebiscite, see Treaty of Versailles, art 49; for the Upper Silesia plebiscite and International Commission, see Treaty of Versailles, art 88.

42 The agreement is reprinted in 12 Documents Diplomatiques Français 798 (2d ser 1938). See also Hubert Ripka, *Munich: Before and After* (Ida Sindelkova and Edgar Young tr; H. Fertig 1969, first pubished 1939) 269.

totelian terms, the Accords were more of a *peripeteia*, a reversal within the logic of the drama,[43] rather than a *deus ex machina*, some new *persona* introduced from the outside. The new weight given to the 'predominant Germans' of Munich indeed reversed the fortunes of the established characters of the Versailles drama. This character, however, did not introduce a new kind of *persona* from the outside, for similar *personae,* like Wilson's 'indisputable Poles,' were long well-established in the tale.

As so often in Greek drama, this *peripeteia* was achieved through the use of language. To be sure, the reversal did not occur through language which reveals a previously unknown truth, as in plays like *Oedipus Rex*. On the contrary, the Munich Accords used familiar language, but in a way which emptied out the previous truth of its meaning. This linguistic subversion is characteristic of parody, here undertaken with the most heinous aims. The parody was so effective that the French and British who acclaimed the Accords did not even sense its destructive power until it was too late.

### *7. No Exit?*

Despite the Versailles drama's elaborate and powerful constructions, there were those who proclaimed their refusal to participate in it, despite, or even because of, its promise of Peace-through-Law. Some of these refusals can be found in the responses to the War of the Rif published in the journal *Clarté*, a far-left literary journal, in 1925. The journal had invited such responses in an 'Open Letter' condemning France's attack on the Rif's 'independence and national sovereignty,' to which it was entitled by virtue of the 'inalienable right of the self-determination of peoples.'[44] The radical French writer Henry Poulaille[45] responded as follows:

> The war in Morocco?
> Obviously against.
> Against all wars.

43 Aristotle, *Poetics* 1452a.

44 Editors of Clarté, 'Lettre Ouverte aux Intellectuels pacifistes, anciens combattants, révoltés' (1925) 75 Clarté 1.

45 Poulaille was a somewhat unclassifiable left-wing political and cultural radical. He founded the 'proletarian school' of French literature and participated in anti-war and anarchist activism, while opposing the Communist Party and supporting Victor Serge, a Trotskyist imprisoned by Stalin.

> On the subject of this new 'last' war, what happens to the question of *Law*?
> Is the war in Morocco also a war of law?
> Then against law.[46]

And thus, in a few pithy phrases, Poulaille systematically rejected the kind of pacifism represented by the *Association de la Paix par le Droit*. Poulaille's contempt for the 1914–1918 'war of law' led him not only to reject all wars, but even all law. To declare a 'regime of law' to have been 'specified and stimulated' by war would be the ultimate condemnation of both.

A more well-known cultural and political radical, Louis Aragon, responded to the War of the Rif by directing his scorn at some of the key Versailles *dramatis personae*. Because the war was being waged 'in the name of France,' he declared that the very 'idea' of France, 'like all national ideas,' should 'disappear from the Earth.' [47] But he also addressed himself to the *Clarté* editors, condemning the principles upon which they based their own opposition to the war.

> [L]et me reproach you ... for having used expressions drawn from nationalist language: *independence*, *national sovereignty*, *inalienable right of peoples to self-determination*. For me, *there are no 'peoples.'* I can barely understand this word in the singular.[48]

Aragon here rejects not only key *personae* of the Versailles drama but also of the anticipated leftist revision of that drama to include anti-colonial *personae*: nationalism, national sovereignty, self-determination, even 'peoples.' Indeed, Aragon refuses even the ultimate *persona* of the Marxist imagination, 'the people' in the singular. I note that the Aragon of this declaration is the Dadaist and Surrealist rebel, not the later Aragon who joined the Communist Party—a party with a fixed sense of who comprised the legitimate *dramatis personae* on the international stage, even if drawn from a radically different list than that of Versailles.

### *8. The 'Art of Justice' and the 'Smoking Crater'*

In 1930, Robert Redslob, professor of international law at Strasbourg, published *Le Principe des Nationalités*, a monograph on nationalism in histori-

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46 'Réponse de M. Henry Poulaille' (1925) 76 Clarté 21.
47 'Réponse de M. Louis Aragon' (1925) 76 *Clarté* 23–24.
48 ibid 24 (emphasis added).

cal, philosophical, and legal perspective.[49] Redslob's career straddled the divide between German and French sovereignty over his native Alsace. This 1930 work was thus a mid-career reckoning with a force that powerfully shaped his life. *Le Principe des nationalités* is a stylistic and substantive *tour de force*, whose paradoxes, reversals, enthusiasms, and erudition I have explored at length elsewhere.[50]

By 1930, the Versailles drama was past its zenith. In September, the Nazis became the second largest party in the German parliament, increasing the number of their seats nearly ten-fold. A 1930 monograph optimistically appraising international law's engagement with nationalism, even if fully acknowledging the many difficulties, can only appear to us, like the journal cover with which I began this paper, as resembling a daydream at the edge of a volcano.

It is, therefore, somewhat startling when we recognize Redslob's acute awareness of his situation, as in the following description of law's relationship to nationalism:

> One must not delude oneself with the hope that one can fully illuminate this crater filled with flames and smoke … [In relation to nationalist conflicts], justice is no longer a science but an art … It is here that its imperfection appears, but it is here that, at the same time, its sovereign grandeur reveals itself.[51]

The 'sovereign grandeur' of an 'art' attempting to 'illuminate' a 'crater filled with flames and smoke': Redslob's stance is that of a tragic nobility, determination in the face of an indomitable, ungraspable force.

Indeed, the context of the passage from which I have taken the above quote suggests that a full consciousness of the indeterminacies, dangers, and yet unavoidability of the legal construction of *personae* lies behind Redslob's evocative imagery:

> In the dogma of nationalities, true and false conceptions, all irreducible, are intermixed. … The world of the living is made of light and shadow. … [H]umanity will always be pursued by Pilate's tragic apostrophe: 'What is truth?' [John 18:38].

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49 Robert Redslob, *Le Principe des Nationalités* (Sirey1930).

50 Nathaniel Berman, '"But the Alternative is Despair": European Nationalism and the Modernist Renewal of International Law' (1993) 106 Harvard Law Review 1792, 1808–1821.

51 Redslob (n 49) 38.

The passage from the Gospel of John to which Redlsob refers concerns precisely the quest by Pilate to determine the *persona* of Jesus, indeed the legal question of whether he is a sovereign [‘Are thou the King of the Jews?’, John 18:33]. Jesus then engages him in a riddling colloquy about the different possible meanings of sovereignty, playing with the polysemousness of the word ‘kingdom.’ The context of Redslob’s citation of Pilate startlingly implies his identification, and that of international law generally, with this figure charged with adjudicating the most famous trial of identity in the Western imagination. His reading of Pilate’s enigmatic question (‘What is truth?’) as ‘tragic’ implicitly proclaims the necessity, the intrinsic uncertainty, and the perils of the legal determination placed before the Roman Prefect. For Redslob, the ‘sovereign grandeur’ of law lies in its perseverance in the tragedy it which must act. And, of course, given the horrors that would shortly unfold in Europe, the anti-Jewish propaganda in the service of which the Gospel of John has historically been recruited compounds the fraught implications of Redslob’s quote.

I have, in earlier studies, taken up Reslob’s invitation to treat international law’s engagement with nationalism as an ‘art’ in a number of ways. Given the themes of this paper, I will here read it in terms of the art of drama, especially the construction of the *dramatis personae*. I will examine Redslob’s imputation of ‘tragedy’ and ‘sovereign grandeur’ to this art in relation to its most developed and subtle instantiation: the construction of the *personae* of the ‘international experiment of Upper Silesia,’ truly the *Gesamtkunstwerk* of Versailles dramaturgy. This art-work included an attempt to subtly balance the following *personae*:

- *National states*: the region was partitioned between German and Poland;
- *Supranational economic entity:* the Geneva Convention contained many provisions seeking to ensure the economic unity of the partitioned region for fifteen years;
- *Minorities*: the Convention granted Polish and German minorities on the two sides of the partition line extensive substantive and procedural rights, unparalleled elsewhere;
- *Transnational ethnic identity*: in contrast to the rest of the minority protection system, which denied ‘kin-states’ any role in protecting their ethnic ‘kin’ in other states, Germany and Poland played a variety of roles in such protection in Upper Silesia;
- *Supranational adjudicatory system:* the Mixed Commission’ and ‘Arbitral Tribunal,’ comprised of international, German, and Polish of-

ficials, were entrusted with hearing disputes brought by individuals under the Geneva Convention;

- *Domestic legal systems partially integrated in a supranational system*: many cases could be brought directly in the Arbitral Tribunal; cases that began in domestic courts could also be referred to the Arbitral Tribunal at the request of the parties if they implicated questions under the Convention;
- *Internationalized individuals*: Upper Silesians attained an unprecedented international legal status by virtue of their ability to bring cases before the supranational Arbitral Tribunal; Upper Silesians who had opted for citizenship in the state in which they did not reside could remain in the state of their residency—creating a 'special category' of Upper Silesians who would have been considered mere 'aliens' under previous international law, 'an entirely new departure in international law'[52] that constructed a new legal *persona*.

It is by virtue of this complex list of *personae*, drawn from a variety of frameworks of political, economic, and judicial governance, that I dub the Upper Silesia regime the *Gestamtkunstwerk* of Versailles dramaturgy. The explicitly temporary nature of this 'experiment,' destined to lapse after fifteen years, emphasizes the constructed and contingent quality of its *personae*.

Nonetheless, many of these *personae* were to endure on the international stage long after the demise of their original instantiation in the Upper Silesian theater. The 1947 Palestine Partition Plan, for example, echoed the Upper Silesia regime in many of its key features and *personae*. The Dayton Accords for Bosnia also echoed, in revised form, many of the key features and *personae* of the Upper Silesia regime. Indeed, the European Union itself, a supranational regime providing economic unity, the partial integration of domestic legal systems in a supranational system, and a new legal status for individuals, even while maintaining the sovereignty of its member states, may justly be considered the chief progeny of the Upper Silesia regime.

If Upper Silesia was the site of the Versailles drama's *Gestamtkunstwerk*, it was also the site of its final scene. When the Nazis decided to finally destroy the Versailles treaty, they did so with an action that thoroughly confounded this site of the most delicate balancing of the Versailles *personae*. On August 31, 1939, German troops wearing civilian clothes attacked a ra-

52 Kaeckenbeeck (n 3) 187–188.

dio station on the German side of the Upper Silesian partition border, broadcast an announcement that the station was in Polish hands, and left behind a dead concentration camp prisoner dressed in Polish army uniform. This murdered prisoner was a German Upper Silesian who had fought on the Polish side during civil unrest in the region in 1921.[53] This elaborately conceived dramatic gesture, which served as the pretext for the invasion of Poland, was something other than the subversive parody of the Munich Accords. It was a direct assault on the *dramatis personae* of Versailles, their literal, as well as gestural, murder.

### 9. *Conclusion … or Not?*

Some might think it would be fitting to close this portrayal of the Versailles drama with August 31, 1939, the final scene of the tragedy, and the opening scene of the unimaginable horror that followed. I have asserted, however, that the Versailles drama did not end with the demise of its founding treaties. On the contrary, I maintain that its dramatis personae endure a century later, even if continually revised, expanded by some new *personae*, contracted through the demise of some old ones. If it has indeed lived on to our day, is it appropriate to call it a tragedy?

In the Preface to *The International Experiment of Upper Silesia*, dated October 5, 1939, Kaeckenbeeck declares:

> This is no war literature. The present work was written before the war broke out, and was conceived as a contribution to peace and international law. The horror into which Europe has now been plunged has not been permitted to influence its spirit … Should it succeed in giving useful inspiration for future settlements, one of my fondest hopes would be fulfilled.[54]

While Kackenbeeck no doubt intended the term 'war literature' as a synonym for 'propaganda,' I propose reading it as the designation of a literary genre, that of a tragedy that ends in war. Kaeckenbeeck is trying to prevent us from reading his *chef-d'œuvre* as such a tragedy. He insists that he completed the work when the outcome of the drama was still open, when the

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53 See Leonard Mosley, *On Borrowed Time: How World War II Began* (Random House 1969) 430–34; Donald C Watt, *How War Came: The Immediate Origins of the Second World War, 1938–1939* (Pantheon 1989) 532.

54 Kaeckenbeeck (n 3) vii.

happy end of a comedy was still possible. He sought to make a 'contribution to peace and international law,' even, in light of his other statements, 'peace-*through*-international-law.'

He urges us to read his 'literature' in that optic, not to view the horror of the new World War as that in which the Versailles drama inevitably culminated. On the contrary, he envisions a future in which the apocalypse of the war might seem like just an episode in a continuing drama. He addresses himself to those who might someday still identify with the *personae* of the Versailles-era internationalists, to those who might seek in the 'international experiment of Upper Silesia' the 'inspiration' for the 'settlement' of conflicts yet to come. He is thus addressing himself to the future authors of the Palestine Partition Plan, of the Dayton Accords, of 'international experiments' we can only imagine—and to the scholars who will study, interpret, and draw lessons from them. In short, he addresses himself to us, beseeching us to see the Versailles drama as perpetually open, its outcome always in the future. And that outcome depends, in part, on how we take up the *personae* of the 'internationalists' to whom Kaeckenbeeck implicitly addresses himself.

The 'internationalist' *persona* (whether or not designated by that term), was not invented by the Versailles treaties, but the institutionalized international community and the 'new international law' they inaugurated gave it a far more central role. 'Internationalist' can designate at least two distinct *personae*. The first includes those whose specialty, either as practitioners or scholars, is international law. The second includes those who advocate the ideology of internationalism, the advancement of greater cooperation and understanding among nations, often accompanied by advocacy of the attenuation of the political and legal prerogatives of sovereignty. These *personae* often overlap: international legal scholars and practitioners often commit themselves to creating a world of peace and understanding, one in which sovereigns can no longer initiate and conduct war in an unfettered manner. Most of the best-remembered international jurists of the interwar period fit this description. This overlap, however, has no logical necessity: one may be an ideological internationalist but possess no legal training; one may be an international jurist and dedicate oneself to a fierce defense of sovereign prerogatives.

Moreover, the deepest differences divide even those who fit both senses of the 'internationalist' *persona.* They include both pro-colonialists and anti-colonialists, Communists and anti-Communists, feminists and those indifferent to the issue of international patriarchy. Despite these and other radical differences, most of those I have just named have understood themselves as believers in Peace-through-Law—including both principled paci-

fists and those who have believed that the establishment of a just world requires armed force to restructure the world stage, in order to 'specify and stimulate' a legal regime worthy of respect.

Thus, while the 'internationalist' persona is a legacy of the long drama in which we act, we can, and indeed must, take up that role in a way that chooses among its prior, widely divergent, performances, or that invents new ones. To borrow and adapt the words of Judith Butler:

> In a sense, all signification takes place within the orbit of the compulsion to repeat; 'agency,' then, is to be located within the possibility of a variation on that repetition … The injunction *to be* a given [*persona*] … takes place through discursive routes … in response to a variety of different demands all at once. The coexistence or convergence of such discursive injunctions produces the possibility of a complex reconfiguration and redeployment; it is not a transcendental subject who enables action in the midst of such a convergence. There is no self that is prior to the convergence or who maintains 'integrity' prior to its entrance into this conflicted cultural field. There is only a taking up of the tools where they lie …[55]

The injunction, or aspiration, '*to be*' a persona, can be 'taken up' in many different ways, and must always be taken up anew. This dictum applies to the 'internationalist' *persona*, just as it applies to *personae* such as 'state,' 'people,' and 'minority'—or to personae such as 'Germans,' 'French,' 'Jews,' and so on. Even the *persona* of 'rebel against all the official *personae*,' is one that has been bequeathed to us by precursors as different as the Riffan Abd el-Krim and the Parisian Louis Aragon.

In the conclusion to my 1993 study of the interwar period's 'modernist renewal of international law,' I quoted Adorno's famous 1949 dictum 'To write poetry after Auschwitz is barbaric.'[56] At a time of post-Cold War international legal exuberance, I asked whether this condemnation of European high culture for its failure to prevent, or even for its complicity in, Auschwitz might apply to international law, an artifact of that same culture. In our very different time of disintegration and disillusionment, I would like again to contemplate Adorno's revision of that statement published in 1966:

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55 Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity* (Routledge 1999) 185.

56 Theodor W Adorno, 'Cultural Criticism and Society' (1944) in *Prisms* (Samuel & Sherry Weber tr, MIT Press 1981) 17, 34. See discussion in Berman, '"But the Alternative is Despair…"' (n 50) 1900–1901.

> Perennial suffering has as much right to expression as a tortured man has to scream; hence it may have been wrong to say that after Auschwitz you could no longer write poems. But it is not wrong to raise the less cultural question whether after Auschwitz you can go on living—especially whether one who escaped by accident, one who by rights should have been killed, may go on living. … By way of atonement he will be plagued by dreams such as that he is no longer living at all, that he was sent to the ovens in 1944 and his whole existence since has been imaginary, an emanation of the insane wish of a man killed twenty years earlier.[57]

There is, similarly, something 'insane' about continuing to inhabit the 'internationalist' persona after World War II, the war which the 'new international law' of the Versailles drama did not prevent—as well as after Vietnam, after the Bosnian genocide, the Rwandan genocide, and the numerous other horrors perpetrated in full public view, long after the re-imagination of the international stage by the dramaturges of Versailles.

But, we may ask: was it not also 'insane' to invent the 'new international law' after the 'Great War,' the war that the idealists of the *Association de la Paix par le Droit* did not prevent, despite their conjuration of the disarming cherub and the edifying ephebe who sought to transform the Warrior into a Tiller of the Soil?

It is, in short, a dramatic, maybe even 'insane,' gesture to entitle a conference on the Versailles Treaty, 'Peace through Law.' But we, who have chosen to live on as 'internationalists'—even after the repeated murder of that *persona* over the past century—must take up that gesture, 'reconfiguring and redeploying' it in ever-new ways.

What is the fate of the Versailles drama within which we all live? It is too early to tell.

57 Theodor W Adorno, *Negative Dialectics* (EB Ashton tr, Seabury 1973) 362–363.