



THE

# INTERNATIONALISTS

HOW A RADICAL PLAN  
TO OUTLAW WAR  
REMADE THE WORLD

[ OONA A. HATHAWAY AND SCOTT J. SHAPIRO ]

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# INTRODUCTION

Crowds gathered outside the Quai d'Orsay to watch the world leaders arrive. Onlookers stood wherever they could: on the sidewalk, on taxis, on trucks, on the parapets of the Seine. An extra squad of police mobilized just to remove the people who had climbed streetlamps to get a better view. Dignitaries and journalists pressed through the crowds and handed the ushers their invitations, yellow cards printed for that date, August 27, 1928, with the words: “*Signature du pacte générale renonciation à la guerre*”—“The Signing of the General Pact for the Renunciation of War.”<sup>1</sup>

The ushers led the guests into the grand Salle de l'Horloge, the “Clock Room,” deep within the immense Foreign Ministry. Enormous chandeliers hung from the hall's shining gold ceiling, and blood-red drapes sealed off the outside world. Four colorful cartouches, each depicting one of the “Four Continents,” were poised on the exquisitely carved moldings. The entire chamber appeared to have been designed to send one message: The Law of the World is made here.

And, indeed, for generations, it had been. In this lavishly appointed hall, the international community established a uniform system of measurements for commerce and science in 1875.<sup>2</sup> The League of Nations, instituted to resolve disputes between states, first assembled here in 1920.<sup>3</sup> And it was here, only a decade earlier, that the victorious nations dictated the terms of the peace to a defeated Germany.<sup>4</sup>

It was a balmy day outside but hellishly hot inside the Salle de l'Horloge. Blazing klieg lights set up to film the ceremony had turned the Clock Room into an oven, roasting the dignitaries in their formal attire. At precisely 3:01, the procession began. Swiss guards carrying

medieval halberds led the emissaries into the room. Just as the guests rose, the shouting began. “Sit! Sit!” the cameramen barked in many different languages. The guests were blocking the shot. Stunned by the incivility of the photographers but obeying orders, they returned to their seats.

Aristide Briand, the French foreign minister, was the master of ceremonies. Briand did not look like a statesman. He was neither tall nor striking. A long drooping mustache obscured a good portion of his grizzled face, and he often seemed bored. Yet Briand was no jaded diplomat. He was an indefatigable defender of France who had spent the decade since Germany’s defeat working to spare his country another bloody conflict. Just two years earlier, in 1926, he had won the Nobel Peace Prize for brokering the Locarno Treaties, an interlocking set of agreements designed to prevent the major European powers from waging war with each other. Now Briand, together with his American counterpart, Frank Kellogg, the U.S. secretary of state, aimed to spread the “Spirit of Locarno” to the entire globe.<sup>5</sup>

As Briand rose to speak, the camera crews switched off the bright klieg lamps and replaced them with a softer spotlight focused on Briand. He began by warmly acknowledging Kellogg on his left, and Gustav Stresemann, the German foreign minister, on his right. This day, he declared, “marks a new date in the history of mankind” and the end of “selfish and willful warfare.” From this moment, the nations of the world will no longer treat war as a lawful means to resolve disputes. The treaty will attack “the evil at its very root” by depriving war of “its legitimacy.”<sup>6</sup> The room burst into applause. Tears ran down Kellogg’s cheeks.

The klieg lights reignited. Blinded, Briand asked that they be switched off, but the cameramen refused. Briand then turned and bowed to Stresemann, who rose and approached the treaty. His head and neck glistening with perspiration, Stresemann sat down at a small table on which the parchment document lay and lifted a foot-long gold fountain pen, a recent gift to Kellogg from the town of Le Havre. The pen was decorated with laurel wreaths and inscribed with the phrase: “*Si vis pacem, para pacem*”—“If you want peace, prepare for peace”—a play

on the celebrated maxim usually attributed to the Roman military theorist Vegetius: “If you want peace, prepare for war.”<sup>7</sup>

Kellogg was next. Unable to get the unwieldy pen to work, he grimaced with irritation and gave it a vigorous shake.

After Kellogg, Paul Hymans, the Belgian minister of foreign affairs, signed the treaty for Belgium and Briand signed for France. The U.K.’s acting foreign secretary, Lord Cushendun, then signed for Great Britain and Northern Ireland. The plenipotentiaries of Canada, New Zealand, South Africa, Australia, the Irish Free State, India, Italy, Japan, Poland, and Czechoslovakia followed suit.<sup>8</sup>

The entire ceremony took less than an hour. At 3:57 p.m., a Swiss Guard banged his halberd on the floor, the cameras stopped rolling, and, for the first time in the history of the world, war was declared illegal.



You don’t have to be an expert in international relations to know that the agreement signed that day—the Paris Peace Pact—failed to end war. Three years after the grand pronouncement, Japan invaded China. Four years after that, Italy invaded Ethiopia. Four years later, Germany invaded Poland and then most of Europe. With the exception of Ireland, every one of the states that had gathered in Paris to renounce war was *at war*. And the ensuing catastrophe was far more destructive than the one that preceded it. The death toll of the Second World War was five times that of the First World War—an unimaginable seventy million people.<sup>9</sup> It was the deadliest conflict in over a thousand years.<sup>10</sup> Nor did the Pact stop the Korean War, the Arab-Israeli conflict, the Indo-Pakistani wars, the Vietnam War, the breakup of Yugoslavia, the genocide in Rwanda, the “war on terror,” or the current conflicts in Ukraine and Syria.

The Paris Peace Pact was, at the time, the most ratified treaty in history, having been joined by sixty-three nations.<sup>1</sup> Today, however, it is largely forgotten. Few people have heard of it. Most historians ignore it. Neither *The Penguin History of the World* nor Oxford’s *The History of the World*, each over 1,200 pages, mentions it even once.<sup>11</sup> When the Peace



Pact (known in the United States as the Kellogg-Briand Pact) is mentioned, it is usually to dismiss it as an embarrassing lapse in the serious business of international affairs, a naive experiment that should never be repeated. Former secretary of state Henry Kissinger mocked the effort to outlaw war as being “as irresistible as it was meaningless.”<sup>12</sup> The Cold War strategist George Kennan described it as “childish, just childish.”<sup>13</sup> In his otherwise excellent book, *To Hell and Back*, the British historian Ian Kershaw described the Peace Pact as “singularly vacuous.”<sup>14</sup> The diplomat Kenneth Adelman judged it “a laughingstock,” and James M. Lindsay, of the Council on Foreign Relations, called it “the international equivalent of an air kiss.”<sup>15</sup>

Perhaps the most damning indictment of the Peace Pact was made by the Belgian filmmaker Henri Storck. In 1932, Storck took the footage of the signing of the Peace Pact and spliced it with scenes from newsreels from 1928: snippets of British dreadnoughts firing their enormous guns; German military officers parading in Pickelhauben, their iconic pointed helmets; and Benito Mussolini defiantly shaking his fist. The film had no narration, but its message was clear: the solemn ceremony in the Clock Room was pure political theater. The Great Powers had absolutely no intention of renouncing war; on the contrary, they were busily preparing for it. The French government was so stung by the satire that it censored the film before its release. It only debuted in 1959, by which time Storck had added marching music to underscore the farcical nature of the proceedings.<sup>16</sup>

The Peace Pact is not reviled like the Treaty of Versailles of 1919 or the Munich Agreement of 1938, both of which are often blamed for contributing to the Second World War. No one actually cares enough to blame or revile it. When we wrote an op-ed in *The New York Times* praising the Pact,<sup>17</sup> the international relations scholar Daniel Drezner remarked, “This might be the first positive mention of the Kellogg-Briand pact in an op-ed that I’ve ever read. I don’t mean that in a snarky way, either—I’ve honestly never seen that treaty talked about favorably.”<sup>18</sup>

The argument of this book is that it should be. The Peace Pact quite plainly did not create world peace. Yet it was among the most transformative events of human history, one that has, ultimately, made

our world far more peaceful. It did not end war between states, but it marked the beginning of the end—and, with it, the replacement of one international order with another.



The “beginning of the end of war between states”? The “creation of a new international order”? These are strong claims, and they understandably provoke skepticism. After all, even as we write these words, many parts of the world are embroiled in brutal, devastating conflicts. Syria is in the midst of the bloody civil war that has already claimed half a million lives. The Kurds are fighting Turkey for independence. Russia has seized Crimea and is currently supporting armed separatists in Eastern Ukraine. The Islamic State has spread from Iraq to Syria and now has control of significant territory in Libya as well. Nigeria is battling the terrorist group Boko Haram. The number of casualties from these conflicts is horrifying. In 2015, there were three armed conflicts—Syria, Iraq, Afghanistan—that had battle-related deaths greater than ten thousand. In Syria alone, the annual toll exceeded thirty thousand. An additional six conflicts, raging on three different continents, had at least one thousand fatalities: Nigeria, South Sudan, and Somalia (Africa); Pakistan and Yemen (Asia); and Ukraine (Europe).<sup>19</sup>

But the chief basis of skepticism about the Peace Pact is not simply that it didn’t work but that it *couldn’t* work, that outlawing war is a fool’s errand in a world of power politics. The idea that war could be ended by declaring it illegal has been routinely dismissed as preposterously naive. As Senator Henry Cabot Lodge put the point, “renouncing war by governmental fiat seems inherently absurd.”<sup>20</sup> Peace-loving states do not need an agreement to keep them from going to war, and warmongers will not be stopped from pursuing their interests by a thin piece of paper.

Our book explains why this skeptical reaction, while reasonable, is wrong. Outlawing war only seems ridiculous to us because ours is a world in which war has already been outlawed. It is difficult to imagine war serving any legitimate function other than a defensive one. Today,

war is regarded as a departure from civilized politics. But this has not always been so. Before 1928, every state accepted the opposite position. War wasn't a departure from civilized politics; it *was* civilized politics. Indeed, states could not imagine doing without it.

Those who signed the Pact sought to end war between states by renouncing war as an instrument of national policy. This renunciation was the beginning of a transformation, not the end. Much like the U.S. Declaration of Independence, the Pact was a decisive break with the past. It was also a promise of a new legal and political order—but one that was still unformed. Just as it took the Revolutionary War, the collapse of the first constitution of the United States (known as the Articles of Confederation), and the ratification of a second constitution in 1789 for the Declaration's promise to be realized, it would take two decades of struggle, including a world war, the collapse of the League of Nations, and the establishment of the United Nations for the promise of the Pact to become a reality.

And it *did* become reality. Drawing on an extensive body of statistical and historical research, we will show that the Pact succeeded in ways few appreciate—not immediately and not precisely as the assembled delegates might have hoped, but over time and in ways that have profoundly shaped the world we live in. Our evidence will reveal not just that the deadliest conflicts *have* become less common, but, more important, that the nature of conflict has changed fundamentally. The Pact was aimed at ending war *between states* and, in that, it proved remarkably successful. But it has certainly not ended all armed conflict. Paradoxically, by removing war from states' legal toolkit and reinforcing their sovereignty, it even may have made some conflicts more difficult to resolve.

The Pact outlawed war. But it did more than that. By prohibiting states from using war to resolve disputes, it began a cascade of events that would give birth to the modern global order. As its effects reverberated across the globe, it reshaped the world map, catalyzed the human rights revolution, enabled the use of economic sanctions as a tool of law enforcement, and ignited the explosion in the number of international organizations that regulate so many aspects of our daily lives.





*The Internationalists* begins by recovering the now forgotten universe of pre-1928 that we call the “Old World Order”—the legal regime European states adopted in the seventeenth century and spent the next three centuries imposing on the rest of the globe. It formed the basis of what we now call “international law.” The rules that defined the Old World Order evolved informally, through a gradual process of improvisation and acculturation. That the rules developed by custom rather than by treaty does not mean, however, that they were any less binding. The rules of the Old World Order were understood to be obligatory, and sovereigns largely obeyed them.

The rules differed starkly from the ones that govern today. The Old World Order was defined first and foremost by the belief that war is a legitimate means of righting wrongs. The inhabitants of the Old World Order would have found the famous maxim from Carl von Clausewitz’s *On War* to be incontrovertibly true: *War is simply the continuation of politics by other means.*<sup>21</sup> Resorting to arms did not signal a failure in the system: It was how the system worked. War was an instrument of justice. *Might was Right.*

But it is not just that the Old World Order sanctioned war: It relied on and rewarded it. All states had the right of conquest: Any state that claimed it had been wronged by another state, and whose demands for reparations were ignored, could retaliate with force and capture territory as compensation. The conquering state thereby became the new sovereign of the captured territory: It owned all public property and possessed the legal authority to rule over its subjects. Nearly every border in the world today bears witness to some such past battle—including that of the United States. Arizona, California, Nevada, Utah, and parts of Colorado, New Mexico, and Wyoming, are no longer part of Mexico because the United States launched a war in 1846 over unpaid debts.

Not only did states have the legal right to wage war to redress wrongs, they could also *threaten* to wage war for the same purpose. When Japan refused to trade with the United States in the nineteenth century, violating its obligation to participate in global commerce, the

United States sent Commodore Matthew Perry with a fleet of gunboats to offer a “treaty of friendship.” He left no doubt that the alternative to friendship was war.

The Old World Order also granted immunities to those who waged war—in effect, authorizing mass homicide. If an ordinary person killed another outside of war, it was a murderous crime. If an army killed thousands during a war, it was not only lawful but glorious. To wage war was to be *necessarily* immune from criminal prosecution.

While waging war was legal, economic sanctions by neutrals against belligerents were prohibited. A state that favored one side over another in an ongoing war could be punished, even if it never fired a shot. Thus, if a neutral state traded with a belligerent but refused to trade with its opponent (or traded, but on less favorable terms), it violated its duty of neutrality and could be attacked in retaliation. Had the United States traded with Great Britain but refused to trade with Germany when the First World War began, it would have violated its duty of neutrality and Germany would have been entitled to strike. It was for this reason that President Woodrow Wilson, who ran for reelection in 1916 on the slogan “He Kept Us Out of War,” called on Americans to remain “impartial in thought as well as in action.”

The Peace Pact was naive—but not for the reason most think. Outlawing war did work. If anything, it worked too well. The problem with the Peace Pact was that it was purely destructive. By outlawing war, states renounced the principal means they had for resolving their disputes. They demolished the existing system, which had allowed states to right wrongs with force, but they failed to replace it with a new system. This was in part because there already was an institution—the League of Nations—that seemed poised to resolve disputes. But the League was built on Old World Order principles. It, too, relied on war and the threat of war to right wrongs and enforce the rules. In a world in which war was outlawed, however, the League’s enforcement mechanism was grounded in a power that states were reluctant to wield.

Thus, when the Japanese invaded Manchuria in 1931, the League was paralyzed. After all, nearly all its members had just renounced war. The *prohibition* on war certainly could not be enforced *with war*. But if not war, then what? Economic sanctions had been illegal under the Old

World Order; only war was legal. Now that war was illegal, maybe sanctions could take its place as a legal tool for punishing states? As the world hurtled toward disaster in the 1930s, philosophers, lawyers, and statesmen struggled to answer these questions, to figure out what would fill the vacuum left by the outlawry of war. Their failure to achieve consensus as to how to respond to illegal behavior—if not with war—created chaos and paralysis, thwarting the possibility of a coordinated, and thus effective, response to the growing Axis threat.



It was not until the Second World War ended that a complete world order premised on the outlawry of war—what we call the “New World Order”—finally came into view. That New World Order, the one in which we now live, is a photo negative of the old one. The Old World Order had rules governing conquest, criminal liability, gunboat diplomacy, and neutrality. The New World Order has rules for all these, too, except they are precisely the opposite. In the New World Order, aggressive wars are illegal. And because aggressive wars are illegal, states no longer have the right to conquer other states; waging an aggressive war is a grave crime; gunboat diplomacy is no longer legitimate; and economic sanctions are not only legal, but the standard way in which international law is enforced.

The New World Order is not simply the law. States actually obey it. There have been breaches, of course—for example Russian president Vladimir Putin’s brazen annexation of the Crimea in 2014. But the disparity between the world before and after the Peace Pact is extraordinary. Russia’s seizure of Crimea is the first significant territorial seizure of its kind in decades. Indeed, we will show that in the century before 1928, states seized territory equal to eleven Crimeas a year on average. The likelihood that a state will suffer a conquest has fallen from *once in a lifetime to once or twice a millennium*.

Our data do not merely show that the international order changed dramatically after the Second World War. Coupled with the historical evidence, they enable us to draw an even more startling conclusion: The transformation in the way that states relate to one another began earlier,

in 1928, set in motion by the Pact. Of course, the Pact was not the *only* factor responsible for this transformation. The Pact repealed the core principle of the Old World Order, but it did not replace it with a new set of institutions. It would therefore take more than the Pact alone to successfully transform the legal order and change state behavior. But the Pact's outlawry of war was a crucial—and overlooked—trigger. It sparked a series of events that would lead to the construction of a new global order.

The prohibition on war has affected when and how often states go to war, but it has also changed how they relate to each other in times of peace. In the New World Order, the only legitimate way for one sovereign state to get another sovereign state to do what it wants is by offering to cooperate in ways that benefit both. The end of war as a legal mechanism for resolving disputes has thus resulted in the rise of unprecedented trade cooperation and has helped propel the creation of thousands of international agreements on everything from coffee growing to tax collection to criminal law. The latest edition of the United Nations Treaty Series includes hundreds of thousands of international agreements filling over 2,800 volumes. Through these agreements, even the smallest states can gain access to nearly every other state in the world using cooperation rather than war.

There is much to celebrate about the New World Order and the decline in interstate war it helped precipitate. But the switch from the Old World Order to the New has had unexpected consequences, not all of them positive. In the Old World Order, where war was legal, a sovereign nation that did not have well-functioning state institutions was at risk of losing territory to a sovereign nation that did. In the New World Order, military aggression is illegal, allowing even weak states to survive. But a world in which weak states can survive is also a world in which weak states can become failed states. Failed states all too often collapse into civil war and humanitarian catastrophe, and they serve as breeding grounds for insurgencies and terrorism. The decline of interstate war and territorial aggression precipitated by the New World Order has thus led to a corresponding increase in failed states and intrastate war. That, too, is the result of changes set in motion by the Peace Pact of 1928.



Historians and international relation theorists have traditionally referred to the modern international order as the “Westphalian order.” It is named after Westphalia, the northwestern region of Germany in which two peace treaties were signed concluding the Thirty Years War (1618–1648), the bloodiest of the European religious wars, which, by most estimates, killed a third of the German population.<sup>22</sup> According to these scholars, the Westphalian peace treaties instituted the modern order of sovereign states. In this system, states are authorized to treat their citizens as they see fit. They are sovereign within their geographic territory, answering to no external power.<sup>23</sup>

This book does not begin in 1648 with the treaties of Westphalia but rather forty years earlier with the work of the Dutch lawyer and philosopher Hugo Grotius (1583–1645). We start here for two reasons. First, as scholars now acknowledge, the treaties of Westphalia had little to do with the international system. Their aim was not to impose the principle of sovereignty on the states of Europe. Their focus was local—to reorder the internal constitution of the Holy Roman Empire and thus end the religious and political conflict between Catholics and Protestants in Germany.<sup>24</sup>

Second, we begin with Grotius because he is generally considered to be the “Father of International Law.” Even more important (and less well understood), he is the preeminent philosopher of war. One of the main arguments of this book is that the defining feature of an international system is how it regulates armed conflict. Grotius was the most creative and articulate exponent of the idea that states are permitted to wage war against each other in order to enforce their legal rights. He was, in other words, a seminal theorist of the Old World Order.

Once we look at the international system through the lens of war, we will see that the system has fundamentally changed. States are no longer permitted to enforce their legal rights through the resort to arms whenever they feel aggrieved. We locate the source of this transformation in 1928—with the signing of the Paris Peace Pact. Beginning then, we aim to show that there has been a tectonic shift—a



transformation from what we have called the Old World Order to the New World Order.

Grotius did not invent the Old World Order. Though he was enormously influential, he was describing practices and systematizing ideas that had been present in Western culture and politics for centuries. But he was, and is, the most articulate exponent of the logic of the Old World Order, and for that reason we use his trenchant, if to modern eyes often troubling, defense as the entryway into its brutal rationale. The Old World Order came fully into its own over the course of the seventeenth century as Grotius was writing about it. And, if we are right, it came to an end on August 27, 1928.



Though we examine a rich trove of data and describe sometimes unfamiliar events, this book is, at its core, a work of intellectual history. It charts the long attempt to address perhaps the most important question about war: When is it legitimate? When is one group of human beings allowed to kill members of another group of human beings?

In tracing how leaders and thinkers have grappled with these questions, we focus on what we believe are key moments in the last several centuries when their answers have changed. We track these changes through the work and lives of two groups of men (they were almost all men). The first we call the “Interventionists.” The Interventionists argued that war was a legitimate method for enforcing rights in the absence of a world government. They were led by Grotius, who saw the Old World Order as a system and constructed an intellectual foundation for a legal order built on war. Nishi Amane (1829–1897) followed Grotius’s lead, seeking to understand the Western system of international law and bringing the Grotian vision to Japan, where he transformed a once isolated nation into a mirror image of the Western imperial powers. Carl Schmitt (1888–1985) anticipated the transformation that would result from the outlawry of war, and in his role as one of the most powerful legal minds of the Third Reich did all he could to prevent it. Sayyid Qutb (1906–1966), an Egyptian

Interventionist disenchanted with the excesses of the West and the increasing secularism of his country, politicized radical Islamic thought, setting a course toward what is today the Islamic State.

The second group, which we call the “Internationalists,” maintained that war was a barbaric way to resolve disputes and that the best way to resolve controversies was through international institutions. The Internationalists were led by Salmon O. Levinson (1865–1941) and James T. Shotwell (1874–1965), rivals who nonetheless shared a vision of a world in which war was outlawed. Levinson organized a social movement behind that vision, and he and Shotwell, in different ways and with different emphases, persuaded the U.S. government to make that idea a reality. Sumner Welles (1892–1961), a rigid, lonely State Department bureaucrat, was forced to resign after news spread that he had propositioned a male railway worker, but not before he succeeded in creating the Internationalist framework for what would become the United Nations. Hersch Lauterpacht (1897–1960), a Jew whose family was murdered in the Holocaust, would become for the Internationalists what Grotius was for the Interventionists. He recognized that the rules of the international system were shifting and put them together to form a new world order based on the illegitimacy, rather than legitimacy, of war. These historically and geographically disparate men did not invent their ideas about war *ex nihilo*. Each in his own way built on the work of those who came before him. But each one introduced remarkable innovations that transformed world history.

A key theme of this book, then, is that *ideas matter*, and people with ideas matter. In that respect, the book is both a history of ideas about war and a history of how these ideas found their way into practice. It is a story of how ideas emerged, clashed, and evolved. It is a story, too, of how ideas became embedded in institutions that restructured human relations, and in the process reshaped the world.

Finally, this book is an effort to reflect on our own generation’s place in this still unfolding tale. It is now easy to take the Peace Pact’s historic achievements for granted. War has been outlawed for nearly a century, and the result has been a period of unprecedented peace and cooperation between states. But we can’t assume that this peace and

cooperation will remain. The rules have changed before, and if we forget the lessons of the past, they could change again.

The Old World Order—the world in which war was a permissible way to address wrongs—was bloody, brutal, and unjust. Millions fought and died before it was defeated. This book asks readers to take a hard look at the world that Aristide Briand, Frank Kellogg, and the others who gathered in that sweltering Paris room in 1928 brought to an end. It also asks them to think about the world that the Pact painfully but successfully brought into existence—and how we can preserve and improve it for future generations.

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I. By 1934, the following countries had become parties to the Pact: Afghanistan, Albania, Australia, Austria, Belgium, Brazil, Bulgaria, Canada, Chile, China, Colombia, Costa Rica, Cuba, Czechoslovakia, Danzig, Denmark, Dominican Republic, Ecuador, Egypt, Estonia, Ethiopia, Finland, France, Germany, Greece, Guatemala, Hayti, Hejaz, Honduras, Hungary, Iceland, India, Iraq, Irish Free State, Italy, Japan, Latvia, Liberia, Lithuania, Luxembourg, Mexico, The Netherlands, New Zealand, Nicaragua, Norway, Panama, Paraguay, Persia, Peru, Poland, Portugal, Roumania, Siam, South Africa, Soviet Union, Spain, Sweden, Switzerland, Turkey, United Kingdom, United States of America, Venezuela, and Yugoslavia. Barbados joined in 1971, Antilles and Aruba in 1986, Commonwealth of Dominica in 1988, and Bosnia and Herzegovina in 1994.

## FOUR

# CITIZEN GENÊT GOES TO WASHINGTON

The British prime minister Edward Heath once defined a diplomat as someone who thinks twice before saying nothing. By this definition, Edmond-Charles Genêt was no diplomat. He was brash and outspoken, careless in his choice of words, and incapable of nuance. He better fit the definition of a blowhard—someone whose mouth is not on speaking terms with his brain. Yet Genêt *was* a diplomat. In 1792, he was appointed the French minister to the United States.<sup>1</sup>

At the time, France was in desperate shape. In its fervor to spread the blessings of the Revolution to the rest of Europe, it waged war on most of it.<sup>2</sup> France had declared war on Austria in April 1792 and Prussia had allied with Austria. The following February, France declared war on Great Britain and Holland, and a month later, on Spain and Portugal. Overextended and surrounded, the revolutionary government sent the bumbling Genêt to persuade the United States to join the European war that it had foolishly started and was currently losing.

Fortunately for Genêt, the United States was sympathetic to his message. Memory of France's support of the American Revolution was fresh in the minds of the erstwhile colonists. Like its former benefactor, the United States had just liberated itself from a European monarchy and embarked on a daring experiment in self-government. Together France and the United States formed, in the words of the Ministry's instructions to Genêt, a new "Empire de la Liberté."<sup>3</sup> Americans saw the French Revolution through the lens of their own struggle for

independence—those storming the Bastille were charging along the path blazed by George Washington, Thomas Jefferson, and Benjamin Franklin. French revolutionaries were happy to concede the point. The Marquis de Lafayette sent Washington the key to the Bastille, for as Thomas Paine explained, “That the principles of America opened the Bastille is not to be doubted; and therefore the key comes to the right place.”<sup>4</sup>

Unfortunately for Genêt, while idealism suggested one course of action, prudence counseled quite another. The United States could not afford to become embroiled in a European war. Its army was insignificant, its navy nonexistent. It barely had a functioning government. Its only real source of income was import duties from British trade. Waging war against Britain, let alone its many allies, would have been financial and military suicide.

Genêt’s task was a mission impossible. Perhaps a master diplomat could have eked out a semblance of victory. As events would make clear, Genêt was no master diplomat.

## **ASSISTANCE JUST SHORT OF WAR**

Edmond-Charles Genêt was born in Versailles on January 8, 1763, the only son of five children. Though his family was bourgeois, it had strong connections to the nobility. His eldest sister was the First Lady of Marie Antoinette’s Bedchamber, a sort of personal assistant who arranged the queen’s social calendar and paid her bills. Edmond’s father was the head of the Bureau of Interpretation and schooled his son in various European languages. The son turned out to be a linguistic prodigy, mastering English, French, Swedish, Italian, German, Latin, and Hebrew by the age of twelve. With the help of his tutor, he translated a Swedish biography of the sixteenth-century King Eric XIV into French—a feat that so impressed Eric’s descendant, the present King of Sweden, that he gave Edmond a gold medallion as a gift.<sup>5</sup>

Edmond grew into a dashing young man with polished manners and sparkling wit. He was also a talented singer who performed for the ladies at court. With the queen’s help, Edmond broke into the



diplomatic corps as the secretary of the French embassy in St. Petersburg, arriving there in 1788. But he was an ardent republican and after four years at his post, Empress Catherine banished him. He returned to Paris in September 1792, just as the Revolution began its radical phase.<sup>6</sup>

News of his expulsion for excessive revolutionary zeal endeared Genêt to the Girondins, the hawkish party of the French National Convention. When these hawks shattered the peace and plunged the country into a bloody confrontation with most of the crowned heads of Europe, they realized that they needed assistance. The plan was to send Genêt to the United States where he would persuade France's fellow republic to join its noble cause.<sup>7</sup>

The Girondins understood that the United States might refuse to enter the war.<sup>8</sup> In that case, they expected assistance just short of war.<sup>9</sup> The French Foreign Ministry instructed Genêt to ask the United States to expedite the repayment of the debt owed to France that was incurred during the Revolutionary War. He would then use the funds to buy American supplies for the war effort back home.<sup>10</sup> Next, the ministry instructed Genêt to undermine the Spanish and British Empires by assembling teams of American adventurers to infiltrate Spanish-held Florida and Louisiana and the British colony of Canada, where they would foment rebellion.<sup>11</sup> Finally, Genêt came armed with a thick stack of three hundred blank *letters of marque* (special letters authorizing private sailors to attack and capture foreign vessels) that he would use to assemble a fleet of "privateers"—a veritable private navy of American sailors—to prey on British shipping.<sup>12</sup>

On February 7, 1793, Genêt set out in the forty-four-gun frigate *Embuscade* for Philadelphia, then the capital of the United States. Adverse winds blew the ship off course, forcing it to land in Charleston, South Carolina, two months later. To Genêt's delight, a boisterous throng of well-wishers met him at the pier. Local dignitaries and the state governor also received Genêt and offered him their unlimited assistance.<sup>13</sup>

Proper protocol would have called for Genêt to head straight to Philadelphia, present his credentials to the administration, and clear his plans with the president. Genêt, however, was not one for protocol. He

regarded diplomatic conventions as vestiges of aristocratic politesse, archaic mannerisms unbecoming of democrats. Though benefiting much from the *ancien régime*, Genêt now distanced himself from its decadence and used the unpretentious title of “Citoyen,” or Citizen.<sup>14</sup>

Citizen Genêt remained in Charleston, where he went to work. He liberally dispersed his *letters of marque* at the bustling waterfront, commissioning four ships of privateers and rechristening them the *Républicain*, *Anti-George*, *Sans Culotte*, and *Patriote Genêt*. He empowered local French consuls to act as prize courts, thus bypassing the American judicial system. He also assembled bands of adventurers to overthrow British and Spanish colonial rule. Having completed this phase of his mission, Genêt traveled overland to Philadelphia so that he could bask in the adulation of the crowds along the way, a detour that took him twenty-eight days to complete.<sup>15</sup>

Given his leisurely pace, news of Genêt’s exploits preceded his arrival on May 16. George Hammond, the British ambassador, had complained to Thomas Jefferson, the secretary of state, about the commissions and outfitting of privateers in Charleston. He was especially galled by the *Embuscade*’s recent seizing of the *Grange* as a prize of war.<sup>16</sup> The British ship was undiplomatically hauled into Philadelphia harbor by the French ambassador’s frigate to the cheers of the crowd.<sup>17</sup> Hammond wrote to Jefferson that he “can entertain no doubt that the executive government of the United States will consider this infringement on its neutrality.”<sup>18</sup>

Jefferson was among the staunchest supporters of France in America, his Francophilia verging on fanaticism. Serving as the American ambassador in Paris, he witnessed the inception of the Revolution and was profoundly moved by its success.<sup>19</sup> The influence and appreciation was mutual—the French “Declaration of the Rights of Man” drew upon Jefferson’s own “Declaration of Independence.”<sup>20</sup> But even Jefferson had to agree with the British ambassador that Genêt’s actions were illegal. The United States was a neutral country and could not allow its ports to be used by one nation against another. Writing to Genêt on June 5, he asserted “the duty of a neutral nation to prohibit such as would injure one of the warring powers” and expected him to make

reparations for this offense against “the laws of the land, of which the law of nations makes an integral part.”<sup>21</sup>

This response stunned Genêt. Not only did he regard Jefferson as a fellow republican and steadfast friend of France, he was convinced that he had done nothing wrong.<sup>22</sup> To the contrary, he was sure that the United States was reneging on its commitments, charging it with acting in “defiance of treaties that bind the French and the Americans.”<sup>23</sup>

Genêt was referring to the Treaty of Alliance of 1778, the agreement the United States signed in order to secure France’s assistance in its revolution against Britain. The treaty was such a powerful symbol of Franco-American friendship that the inkwell used to sign it would be preserved and used 150 years later to sign the Paris Peace Pact. One of the clauses of the treaty, Article 24, declared that the Americans and the French would exclude each other’s enemies from their ports for the purposes of arming privateers.<sup>24</sup> According to Genêt, since the treaty prohibited France’s enemies from using American ports, it implicitly permitted France to use them in their place.<sup>25</sup>

Jefferson, however, was not persuaded. In a follow-up letter of June 17, he reminded Genêt that Article 24 did not explicitly give the French permission to use American ports.<sup>26</sup> It only denied France’s enemies the right to do so. Since the United States was a neutral country, it could not show favoritism—it could not give France benefits that it denied France’s enemies, such as Britain.

Genêt exploded when he received Jefferson’s letter. He conceded that Jefferson’s interpretation was “ingenious,” but scolded him for its deceit. The secretary of state was using verbal tricks “to justify or excuse infractions committed on positive treaties.”<sup>27</sup> Alexander Hamilton and Henry Knox, the secretaries of treasury and war, were outraged by the tone of Genêt’s letter, claiming it to be “the most offensive paper perhaps that ever was offered by a foreign minister to a friendly power.”<sup>28</sup> Genêt’s tone also shocked Jefferson. He confided to James Madison, another staunch partisan of France, that Genêt was harming their cause and “*will sink the republican interest if they do not abandon him.*”<sup>29</sup>

There is no question that Genêt acted like a clod, offending friends and enemies at every turn. But while his style was indefensible, his

position was more comprehensible. Indeed, it is tempting to regard Genêt as the victim in the whole affair and see his anger toward Jefferson as not merely an understandable response but an entirely justified one. If France's enemies were explicitly prohibited from outfitting in American ports, isn't it natural to infer that France itself *was* permitted?

In truth, Jefferson's interpretation was the far better one. As Genêt should have realized, the rules of the Old World Order prohibited neutral states from playing favorites in war. According to these rules, neutrals had a "duty of impartiality"—they were forbidden from favoring one side over another.<sup>30</sup> To show partiality was to forfeit neutrality and become a co-belligerent. From the legal point of view, it was no different from sending in ground troops.

It is true that the prohibition on discrimination in the Old World Order did not apply to preexisting treaties.<sup>31</sup> A state was permitted to help a belligerent if they had agreed to do so before the war began, because the assistance would have been supplied to fulfill a treaty obligation, not to help a victim. The prohibition on discrimination, in other words, barred nonbelligerents from penalizing one side for waging an unjust war—the same logic that gave soldiers and sovereigns a license to kill.<sup>32</sup>

But the Treaty of 1778 between France and the United States did not trigger this exception. As Jefferson recognized and Genêt failed to grasp, the prohibition on aiding France's enemies had to be read in light of the existing rules of neutrality. Neutrality entailed *strict impartiality*. If Britain could not use American ports to outfit privateers, then the law of nations would not allow France to use them in this way either. To prove his point about "what that law and usage is," Jefferson quoted long sections of Vattel in the original French and then concluded that his country had no choice but to deny France the use of American ports.<sup>33</sup>

Genêt was furious that Jefferson would "bring forward aphorisms of Vattel" to justify his interpretation of the treaty.<sup>34</sup> One wonders, though, how else Jefferson would support his interpretation other than by citing the leading authority of the day. Indeed, the French envoy's unfamiliarity with international law stunned Jefferson. The law of nations constituted the ground rules of diplomatic practice. "His

ignorance of every thing written on the subject is astonishing,” Jefferson wrote to James Madison. “I think he has never read a book of any sort in that branch of science.”<sup>35</sup>

Genêt failed to understand that the duty of impartiality was taken so seriously in the Old World Order that statesmen were skittish about even giving the *appearance* of partisanship. Indeed, when Jefferson castigated Genêt for using American ports on June 5, he tried to soften his letter with a concluding expression of goodwill. “The assurance conveyed in your letter of the friendship and attachment of your nation gives very sincere pleasure and is as sincerely returned on the part of our country,” Jefferson wrote. “That these may continue long and firm, no one more ardently wishes.”<sup>36</sup> The attorney general, however, deemed these anodyne sentiments too sympathetic to France. “Were I to speak for myself, as an individual, I should assent with equal cordiality to the last clause. But,” he continued, “I can’t help believing, that it would accord better with a neutral situation, to omit the reciprocation of affection.”<sup>37</sup> Jefferson struck the entire paragraph.

Because the Old World Order had different rules about discrimination, the original instructions given to Genêt by the Foreign Ministry made little sense. France wanted assistance just short of war when such assistance did not exist. Any unequal support provided by the United States to France would have been a *casus belli*, an act of belligerency warranting a military response. The Girondins should have realized that the United States government could not let its territory be used as a recruiting ground for a rebel army to foment insurrections. To aid France this way would have been an act of war against Britain and Spain.

Nor could the United States advance the money it owed on its war debt. Even if the United States could scrounge up the remaining \$3 million, paying off the debt prematurely would have violated its duty of impartiality and compromised its neutrality.<sup>38</sup> Genêt had run up against something more powerful than his incompetency—the rules of the Old World Order.



## TWO AND TWO MAKE FIVE

Despite this—and despite Jefferson’s blunt order to stop—Genêt did not relent. In addition to organizing seditious expeditions to Kentucky, he outfitted another privateer in Philadelphia harbor, renaming it *La Petite Démocrate*, boosting its guns from four to fourteen, and recruiting a crew of 120, including some American citizens. It was a sign of the U.S. government’s feebleness that it took a month to discover such outright defiance in the heart of the nation’s capital.<sup>39</sup>

When word reached President Washington, he ordered an investigation. And when the investigation confirmed the report, Alexander Dallas, the Pennsylvania secretary of state, directed Genêt not to let *La Petite Démocrate* leave the harbor. Even though he and Genêt were on friendly terms, Genêt became incensed, asserting his right to outfit prizes in American ports and send them to sea, which he proceeded to do. But then he made a threat that was brazen even for him. He told Dallas that he would “appeal from the President to the People.”<sup>40</sup>

Washington lost all patience. He could not permit the French ambassador to bully him with his own electorate. Genêt had to go. Jefferson assembled a long list of Genêt’s peccadillos with supporting documentation and sent the packet to the French government requesting his recall. The French government was happy to comply. Not only was it still hoping for help from the United States, but Genêt was a member of the Girondins, a party that had been ousted by the even more radical Jacobin faction, led by Maximilien Robespierre. To justify the recall, the Jacobins accused Genêt of being a British agent insufficiently loyal to France.<sup>41</sup>

Genêt was not so foolish as to return to France at the height of the Terror. He stayed in the United States and soon married the daughter of George Clinton, the governor of New York. Genêt retired from public life and settled down as a gentleman farmer along the Hudson River three miles from Albany.<sup>42</sup> In his spare time, he dreamed up new inventions, such as a cigar-shaped hydrogen balloon with stabilizers and rudders, detailed in a book he published in 1832.<sup>43</sup>

It may come as no surprise that Genêt's inventions were hopeless, based as they were on a complete ignorance of the laws of physics. "I have looked, in vain, for a single fact, tending to prove the correctness of these assumptions," one reviewer of his book wrote; "they stand . . . in the same predicament with the assertion that, two and two make five."<sup>44</sup>

## RIGHTS AND DUTIES OF NEUTRALITY

According to some scholars, classical Greece and Rome did not recognize neutrality in war.<sup>45</sup> Ancient states were either allies or enemies—there was no in-between. These scholars have pointed out, for example, that Greek and Latin had no word for "neutrality." *Amici* and *socii* connote allies, rather than neutrals. Whether or not ancient international law recognized neutrality in war, the Old World Order certainly did. Indeed, by the eighteenth century states developed a rich and detailed set of rules to regulate the behavior of those who wished to stay out of the fight, many of which were set out in legal treatises by distinguished authorities such as Vattel and later codified in the fifth Hague Convention of 1907.<sup>46</sup>

These rules did not simply say that states had the choice to be neutral; they conferred many valuable rights as well. The most important was that no state could be forced into fighting alongside another, provided of course that it had not agreed to a military alliance beforehand. Further, the territory of a neutral state was inviolable. Enemies could fight in each other's lands or on the high seas, but neutral ground was off limits. Recruiting soldiers on neutral territory was also prohibited, which is why Genêt's activities constituted a serious violation of the United States' sovereignty.

The benefits didn't end there. Neutrals also had the right to conduct business with belligerents—trading did not compromise neutrality. Thus, Britain could not, and did not, complain about the United States selling its goods to France, even though France and its colonies would have starved without American produce. By ensuring the right of neutrals to trade with belligerents, the Old World Order minimized the

economic disruption of war. Economies would not grind to a halt when hostilities broke out. The world would remain open for business.

With rights, however, came responsibilities. The Citizen Genêt affair showed that neutrals were expected to be strictly impartial: They were prohibited from discriminating between warring sides unless there was an explicit agreement otherwise. As Vattel stated, “[A] neutral and impartial nation must not refuse to one of the parties, on account of his present quarrel, what she grants to the other.”<sup>47</sup> Jefferson quoted this precise passage in his June 17 letter to Genêt.

The duty of impartiality was more than a technical legal rule. It embodied Grotius’s bedrock argument—the argument that granted a license to kill—that no one outside a conflict could judge the justice of a war. Nor did the duty of impartiality simply prohibit overt fighting by nonbelligerents. By requiring neutrals to treat belligerents equally, it precluded the possibility of economic sanctions. Trading with one side to the exclusion of the other transformed a neutral—“a common friend of both parties,” in legal parlance—into a co-belligerent, an ally of the trading partner. Vattel was explicit about the forfeiture of neutrality. “But to refuse any of those things to one of the parties purely because he is at war with the other, and because she wishes to favor the latter, would be departing from the line of strict neutrality.”<sup>48</sup> Even though no shots were fired, discrimination in trade was an act of war that licensed the other side to respond with shots of its own.<sup>49</sup>

Indeed, the historical record shows that by the end of the eighteenth century the rule of strict impartiality was strictly followed. The authors of the leading contemporary study of economic sanctions note, with some puzzlement, that “[o]nly after World War I was extensive attention given to the notion that economic sanctions might substitute for armed hostilities as a stand-alone policy.”<sup>50</sup>

This comment gives the impression that the late arrival of economic sanctions resulted from the failure of imagination, as though restricting trade by neutrals was a new form of statecraft that had to be dreamed up before it could be implemented. But the late arrival of economic sanctions is perfectly explicable: Economic sanctions were not imposed by nonbelligerents because the Old World Order did not permit them. For a neutral to impose trade sanctions on a belligerent would have

been a violation of its duty of impartiality, a wrong that licensed war. What makes no sense today made impeccable sense in the Old World Order.

To some states, the rigors of neutrality were a straitjacket, severely limiting their freedom to help their friends—unless they were willing to go to war. To others, however, these demands were enormously liberating. For the law gave them what they wanted most: an excuse. Refusing to assist one side was not a statement about the justice of that side's cause—it was simply obeying the rules. Thus Jefferson could deny Genêt's request by spouting Vattel. From the perspective of his cash-strapped, militarily weak government, the legal barrier against lending its ports for outfitting privateers or accelerating the repayment of debt was not a vexing limitation, but a great relief. What the Grotian philosophy had taken away—the ability to aid an ally without going to war—it had also given: the ability to remain at peace and to trade with both sides of the conflict.

## CODA I

On the Fourth of July 1899, the United States contingent to the First Hague Convention on the Laws of War commemorated Independence Day by celebrating the life of Hugo Grotius. The State Department commissioned the crown jeweler in Berlin to fabricate a large silver wreath for Grotius's tomb: a large garland of frosted silver, one side of oak, with acorns in silver gilt, and on the other of laurel, with berries, also in silver gilt. The stems at the base were held together by a large silver ribbon and bow with an inscription on blue enamel. The plaque read:

TO THE MEMORY OF HUGO GROTIUS

*In Reverence and Gratitude  
From the United States of America  
on the occasion of the International Peace Conference of The Hague*

July 4th, 1899

The celebration took place in the New Church in Delft where Grotius is buried. The proceedings began with the choir's rendition of Mendelssohn's "How Lovely Are the Messengers That Bring Us Good Tidings of Peace." In his tribute to Grotius, Andrew Dickson White, the leader of the American group and organizer of the event, said of *The Law of War and Peace*: "Of all works not claiming divine inspiration, that



book, written by a man proscribed and hated both for his politics and his religion, has proved the greatest blessing of humanity. More than any other it has prevented unmerited suffering, misery, and sorrow; more than any other it has ennobled the military profession; more than any other it has promoted the blessings of peace and diminished the horrors of war.”<sup>1</sup>

Read in light of Grotius’s advocacy in the *Santa Catarina* case, his extensive lobbying efforts on behalf of the Dutch East India Company, and his philosophical construction of the Old World Order, White’s description of *The Law of War and Peace* is absurd. White made Grotius sound like a humanitarian pacifist, when he was the chief spokesman, if not architect, of the right of trading companies and sovereign states to wage war around the globe.<sup>2</sup>

There were internationalist writers who understood Grotius’s work. Kant called Grotius a “sorry comforter” of warmongers.<sup>3</sup> Rousseau thought that Grotius “could not be more favorable to Tyrants” and saw no difference between him and Thomas Hobbes, who thought that there were no rules of justice that governed war.<sup>4</sup> These Internationalists appreciated Grotius’s message because they saw its impact—how often it had, in Kant’s words, been “quoted in justification of military aggression.”<sup>5</sup>

But their voices have long been drowned out by those, like the attendees at the ceremony in Delft, who celebrate Grotius’s contributions to peace and international law. Not only is Grotius still revered as the “Father of International Law,” he is the patron saint of the “Peace Palace”—the name of the building that houses the International Court of Justice. Its library possesses the world’s greatest collection of Grotiana.

Grotius has been misunderstood for so long in part because of a historical accident: His defense of Van Heemskerck was lost for several centuries. Grotius never prepared the manuscript for publication, and the handwritten sheaves were left in a pile of old letters and other materials and passed down through his descendants. When the last male Cornet de Groot died, his belongings were sold off to the public. The bookseller Martin Nijhoff auctioned the papers in 1864. Simon Vissering, a law professor at Leiden University, recognized the

significance of the manuscript and conjectured that it was the original source for *The Free Sea*.<sup>6</sup> The manuscript was published in 1868, but only in Latin. It would not be translated into English until 1950.<sup>7</sup>

The defense of Van Heemskerck is, in many key respects, a rough draft of Grotius's later, widely read work. But it lacks the diplomatic artifice and thus exposes Grotius's true aim. As the great Dutch historian Robert Fruin put it, the goal was "[n]ot, as he assured us, to set bounds to warfare in general, but on the contrary to vindicate the trade of his compatriots with the Indies and the capturing of Portuguese monopolists."<sup>8</sup>

Without access to his earlier work, generations of scholars interpreted Grotius through an internationalist lens. When reading the work in this way, it is possible to find many passages that *sound* pacific. Grotius's admirers cite the famous passage from the beginning of *The Law of War and Peace*: "Throughout the Christian world I observed a lack of restraint in relation to war, such as even barbarous nations should be ashamed of; I observed that men rush to arms for slight causes, or no cause at all, and that when arms have once been taken up there is no longer any respect for law, divine or human."<sup>9</sup> The standard assumption is that Grotius was referring to the Thirty Years War, which began in 1618 and would devastate Europe.<sup>10</sup> The aim of *The Law of War and Peace*, on this benign reading, was to reduce the number of wars and to render the remaining conflicts more humane and less destructive.

While Grotius wrote *The Law of War and Peace* during the Thirty Years War, Grotius did not know that it was the *Thirty Years* War. He composed the famous passage toward the beginning of the conflict, when it was only the Five, or Six, Years War, long before France or Sweden entered the conflict. Grotius was probably not referring to the confessional battles between Protestants and Catholics in Germany. His preoccupation was the imperial struggles between Europeans in the East Indies. Indeed, the book's aim becomes clear in the next (often overlooked) passage: "Confronted with such utter ruthlessness many men, who are the very furthest from being bad men, have come to the point of forbidding all use of arms to the Christian."<sup>11</sup> Grotius was worried, in other words, that the colonial conflicts in the East Indies

were giving war a bad name and that the pacifists would win the political battle to end them.

One aspect of Grotius's work deserves celebration. Grotius did not merely seek to legitimate just wars—he also sought to delegitimize another kind of war, ones that seek to cleanse territory of evil or contagion, which might be called “hygienic wars.” In these conflicts, killing is not normally a means to the end of remedying a wrong. Killing is the end itself. Many holy wars, such as those described in the Hebrew Bible and waged during the medieval Crusades, were hygienic. They were bloody wars of annihilation, seeking to rid sacred lands of infidels. Perhaps because he was a Protestant who was born and raised in the midst of a terrible confessional conflict, Grotius denied the legitimacy of hygienic wars. He rejected the idea that religious differences were just causes of war.<sup>12</sup>

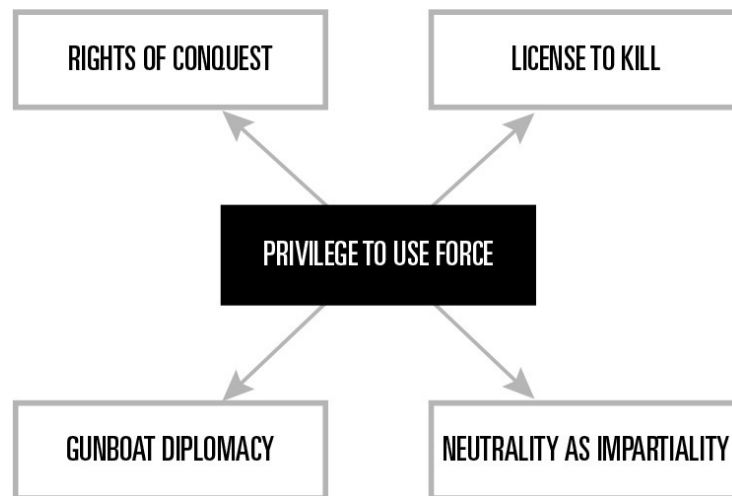
But Grotius's aim was not to end war. He was an Interventionist who was adamant that just wars were acceptable to wage, even if other sorts of wars, such as hygienic ones, were not. Grotius did not reject war or seek to make the world safe for peace. Rather, the signal contribution of the “Father of International Law” was to make the world safe for war.

Though he insisted that war could only be waged for justice, Grotius also understood that in an international order of sovereign states, there are many versions of justice. The stability of legal rights upon which global commerce and international cooperation depends would be undermined by the multiplicity of opinions over the justice of particular conflicts. The only possible way to allow victims to vindicate their rights through war is to allow nonvictims to gain legal rights from war, too. When Might is Right, multiple views on justice no longer matter, and all those who are engaged in war, victims and nonvictims alike, have a license to kill.

Grotius did not invent conquest, criminal immunity for waging war, gunboat diplomacy, or the idea of neutrality as impartiality. He was building on the intuitions and works of those who came before him and articulated similar thoughts. In some cases, he was describing what had been the practice for decades, if not centuries. And yet Grotius saw more than any other that the rules were intertwined and formed a complex system, and he articulated more clearly than any other the

brutal logic of that system. Once war was legal, Grotius understood, there was no alternative to a world where Might made Right.

The logical structure of the international order that Grotius described might look something like the figure below. The diagram not only highlights the parts—the individual rules of war and peace—but also the way in which they fit together into a system. Once states have a privilege to use force to enforce their rights, a range of legal rules inevitably follows.



Those who gathered in Delft in 1899 thus honored a thinker who stood for much of what they reviled and had fought to change. Hugo Grotius was not the great apostle of peace. He was the great apologist of war.<sup>13</sup> As the leading Interventionist, he recast the mass killing of human beings as a justified moral and legal procedure. He also provided states with a new framework and language for legitimating wars. Rulers could now deny that they were fighting for their own rights. They could declare instead that they were fighting for the natural rights of their citizens. In waging war, they were just doing the job delegated to them by the governed.

The theory that Hugo the Great constructed was a work of formidable intellectual power, even beauty. It was also the legal framework that, just a few years after the Delft celebration, sanctioned a war whose moral absurdity no rational person could condone. The war that began in 1914 was the terrible culmination of the Old World Order. It would leave millions dead, millions displaced, and the world's

leaders in despair. And it would prompt another corporate lawyer to rethink the theory that had justified so much suffering and rebuild a very different world order—one in which war was not only irrational, but illegal.