

# Tulsa Law Review

---

Volume 51 | Issue 2

---

Spring 2016

## International Law and the Great War

Jennifer L. Erickson  
*Boston College*

Follow this and additional works at: <https://digitalcommons.law.utulsa.edu/tlr>



Part of the [Law Commons](#)

---

### Recommended Citation

Jennifer L. Erickson, *International Law and the Great War*, 51 *Tulsa L. Rev.* 521 (2016).

Available at: <https://digitalcommons.law.utulsa.edu/tlr/vol51/iss2/24>

This Book Review is brought to you for free and open access by TU Law Digital Commons. It has been accepted for inclusion in *Tulsa Law Review* by an authorized editor of TU Law Digital Commons. For more information, please contact [megan-donald@utulsa.edu](mailto:megan-donald@utulsa.edu).

## INTERNATIONAL LAW AND THE GREAT WAR

Jennifer L. Erickson\*

ISABEL V. HULL, *A SCRAP OF PAPER: BREAKING AND MAKING INTERNATIONAL LAW DURING THE GREAT WAR* (CORNELL UNIVERSITY PRESS 2014). PP. 368. HARDCOVER \$ 45.00.

Does international law matter? This is certainly not a new question, but Isabel V. Hull's *A Scrap of Paper: Breaking and Making International Law during the Great War* gives it fresh historical perspective by examining the role of international law in World War I.<sup>1</sup> This approach also distinguishes *A Scrap of Paper* from an array of other historical accounts and biographies that have been published on the occasion of the centenary of the start of the war. Hull provides a detailed account of the ways in which international law shaped debates within and between major belligerents during the war. She shows that Great Britain and France, and to a lesser extent Germany, engaged in in-depth discussions about what was and was not permissible under international law in deciding how to approach seven key issues during the war, including neutrality and land warfare, occupation and the treatment of civilians, blockade, the use of new weapons in conflict, and the use of reprisals.

In doing so, Hull also seeks to combat prevalent realist views in American international relations (IR), which argue that material power and interest, not law, drive state behavior.<sup>2</sup> She argues that Germany's post-war campaign to redirect international attention from the conduct of the war to its outbreak has erased the role of international law from historical and contemporary conversations about the war.<sup>3</sup> Germany's manufactured "forgetting," in turn, has shaped American IR and its realist core. As German scholars came to the United States after 1945, they brought with them *realpolitik* theories rooted in

---

\* White Family Sesquicentennial Assistant Professor of Political Science and International Studies at Boston College. I am grateful to Tim Crawford, Jennifer Dixon, and Ken Kersch for their helpful comments and insights in preparing this article.

1. ISABEL V. HULL, *A SCRAP OF PAPER: BREAKING AND MAKING INTERNATIONAL LAW DURING THE GREAT WAR* (2014).

2. See, e.g., George W. Downs, David M. Rocke & Peter N. Barsoom, *Is the Good News about Compliance Good News about Cooperation?*, 50 INT'L ORG. 379 (1996); JACK L. GOLDSMITH & ERIC A. POSNER, *THE LIMITS OF INTERNATIONAL LAW* (2005); Stephen D. Krasner, *Realist Views of International Law*, 96 PROC. ANN. MEETING AM. SOC'Y INT'L L. 265 (2002); HANS J. MORGENTHAU, *POLITICS AMONG NATIONS: THE STRUGGLE FOR POWER AND PEACE* (5th ed. 1973).

3. HULL, *supra* note 1, at 3-14.

power just as the field was beginning to harden and professionalize.<sup>4</sup> As a result, Hull charges, the field has tended to underestimate or even ignore the role of international law in World War I, and in war and world politics in general.<sup>5</sup>

Hull presents a unique account of the war through the lens of international law, worthy of the attention of historians, lawyers, and political scientists alike. She is convincing in her efforts to show that policymakers in belligerent states engaged in detailed debates over the interpretation of international law and its consequences. This finding will resonate with many mainstream IR scholars, who would in fact agree with Hull's general claim that law can matter in international politics and war.<sup>6</sup> Contemporary IR theories are diverse in their perspectives on states' commitment to and compliance with international law.<sup>7</sup> However, the discrepancies Hull describes between Great Britain and France's more consistent

4. See Miles Kahler, *Inventing International Relations: International Relations Theory after 1945*, in *NEW THINKING IN INTERNATIONAL RELATIONS THEORY* (1997). One of these foundational German realist scholars was Hans Morgenthau. Morgenthau had originally been a scholar of international law in Germany and Switzerland. It was not World War I, however, that turned him away from international law and into a scholar of political science and power politics, but rather Nazism. See also Mary Ellen O'Connell, *Peace and War*, in *THE OXFORD HANDBOOK OF THE HISTORY OF INTERNATIONAL LAW* 292 (Bardo Fassbender & Anne Peters eds., 2012).

5. HULL, *supra* note 1, at 13-14.

6. See, e.g., Kenneth W. Abbott & Duncan Snidal, *Hard and Soft Law in International Governance*, 54 *INT'L ORG.* 421 (2000); KAREN J. ALTER, *THE NEW TERRAIN OF INTERNATIONAL LAW: COURTS, POLITICS, RIGHTS* (2014); Adam Bower, *Arguing with Law: Strategic Legal Argumentation, US Diplomacy and Debates Over the International Criminal Court*, 41 *REV. INT'L STUD.* 337, 337 (2015); JANINA DILL, *LEGITIMATE TARGETS? SOCIAL CONSTRUCTION, INTERNATIONAL LAW AND US BOMBING* (2014); Renée de Nevers, *The Geneva Conventions and New Wars*, 121 *POL. SCI. Q.* 369 (2006); JENNIFER L. ERICKSON, *DANGEROUS TRADE: ARMS EXPORTS, HUMAN RIGHTS, AND INTERNATIONAL REPUTATION* (2015); MATTHEW A. EVANGELISTA, *LAW, ETHICS, AND THE WAR ON TERROR* (2008); Tanisha M. Fazal, *The Demise of Peace Treaties in Interstate War*, 67 *INT'L ORG.* 695 (2013); Martha Finnemore, *Rules of War and Wars of Rules: The International Red Cross and the Restraint of Violence*, in JOHN BOLL & GEORGE M. THOMAS, *CONSTRUCTING WORLD CULTURE: INTERNATIONAL NONGOVERNMENTAL ORGANIZATIONS SINCE 1875* (1999); Martha Finnemore & Stephen J. Toope, *Alternatives to "Legalization": Richer Views of Law and Politics*, 55 *INT'L ORG.* 743, 743 (2001); COURTNEY HILLEBRECHT, *DOMESTIC POLITICS AND INTERNATIONAL HUMAN RIGHTS TRIBUNALS: THE PROBLEM OF COMPLIANCE* (2014); Ian Hurd, *Legitimacy and Authority in International Politics*, 53 *INT'L ORG.* 379 (1999); Judith G. Kelley & Jon C.W. Pevehouse, *An Opportunity Cost Theory of US Treaty Behavior*, 59 *INT'L STUD. Q.* 531 (2015); Robert O. Keohane, *International Relations and International Law: Two Optics*, 38 *HARV. INT'L L.J.* 487 (1997); Ellen L. Lutz & Kathryn Sikkink, *International Human Rights Law and Practice in Latin America*, 54 *INT'L ORG.* 633, 633 (2000); *THE POLITICS OF INTERNATIONAL LAW* 2 (Christian Reus-Smit ed., 2004); Beth A. Simmons, *International Law and State Behavior: Commitment and Compliance in International Monetary Affairs*, 94 *AM. POL. SCI. REV.* 819, 819 (2000); BETH A. SIMMONS, *MOBILIZING FOR HUMAN RIGHTS: INTERNATIONAL LAW IN DOMESTIC POLITICS* (2009); Thomas W. Smith, *The New Law of War: Legitimizing Hi-Tech and Infrastructure Violence*, 46 *INT'L STUD. Q.* 355 (2002).

7. For IR realists, the anarchic nature of the international system compels rational, self-interested states to rely on their material power capabilities to protect their security and survival. International law only "matters" when states choose to make it matter—that is, when it happens to serve their material interests or when they are coerced to comply by other, more powerful states. Without any world government to enforce it, it plays little meaningful part. In contrast, for neoliberal institutionalists, reciprocity and the "shadow of the future" can motivate compliance from self-interested states seeking material gains from cooperation; states will avoid cooperating with a state with a track record of violating their international commitments. For other IR liberals, democracies' experience of the rule of law in domestic politics spills over into respect for law in international politics. Still others emphasize the ability of domestic institutions to enforce international law. Finally, constructivist IR scholars expand explanations for compliance to non-material factors, including legitimacy, identity, the internalization of laws and social norms, and a sense of legal or normative obligation. Here, compliance is not simply the result of a "logic of consequences" cost-benefit calculation conducted by rational states, but also the "logic of appropriateness," in which states embedded in an international social structure comply because they feel they ought to comply (and wish to avoid the social opprobrium of noncompliance). For a very succinct overview of the three major IR theoretical paradigms and others, see generally Anne-Marie Slaughter, *International Relations, Principal Theories*, in *MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW* (Rüdiger Wolfrum ed., 2011)

attention to the law and Germany's frequent decisions to set aside, flout, or reinterpret it suggest that the importance of law to states and their policymakers varies. *A Scrap of Paper* shows that international law "matters" but inconsistently and often instrumentally. The book therefore raises persistent and nuanced interdisciplinary puzzles about how, when, and why international law matters. Hull introduces plausible answers linked to regime type, civil-military relations, public opinion, and international reputation. However, if international law serves the interests of the existing hegemon rather than the rising power, realists would equally expect Great Britain to uphold it and Germany to set it aside in order to gain a military edge. This is a limitation of the cases, not of Hull's research. Nevertheless, she cannot satisfactorily eliminate, as she sets out to do, realist explanations that look to power and a "coincidence of interest" to understand when and why states follow international law.<sup>8</sup> Rather, it is Hull's findings about the sources of compliance and noncompliance that provide the most complex and interesting insights into contemporary debates about the relationship between law and interest in international politics.

### I. INTERNATIONAL LAW IN WORLD WAR I

International law rarely factors into discussions about World War I.<sup>9</sup> Indeed, World War I ushered in a sense of public disillusionment with war and has been characterized as a failure of prewar international law and cooperation.<sup>10</sup> In the field of international relations, the war is instead commonly told as a story of power politics, alliance competition, and national interest. Hull's contribution is therefore a welcome one. As she notes, "[i]nternational law was so central to how contemporaries interpreted the war because law was a linchpin and guarantee of the post-Napoleonic European state system that the war seemed to be destroying."<sup>11</sup> The years leading up to the war witnessed an outpouring of diplomatic efforts by the major powers to create laws and norms regulating the conduct of war. Although ratification success varied, those efforts included the 1856 Declaration of Paris abolishing privateering; the 1864 and 1906 Geneva Conventions on the treatment of sick and wounded soldiers and sailors; the 1868 St. Petersburg Declaration prohibiting the use of explosive projectiles in war; the 1874 Brussels Declaration on the laws and customs of war; the 1899 and 1907 Hague Conventions on the conduct of war and the settlement of interstate disputes; and the 1909 Declaration of London (DoL) on the laws of naval war.

These agreements did not simply disappear at the start of the war, as Hull shows. In case after case, she documents discussions between politicians, bureaucrats, diplomats,

[https://www.princeton.edu/~slaught/Articles/722\\_IntlRelPrincipalTheories\\_Slaughter\\_20110509zG.pdf](https://www.princeton.edu/~slaught/Articles/722_IntlRelPrincipalTheories_Slaughter_20110509zG.pdf).

8. GOLDSMITH & POSNER, *supra* note 2, at 27.

9. As an exception, see Hatsue Shinohara, *International Law and World War I*, 38 *DIPLOMATIC HIST.* 880 (2014). Interested readers should also look forward to Peter Holquist's current book project, *BY RIGHT OF WAR: IMPERIAL RUSSIA AND THE DISCIPLINE AND PRACTICE OF THE "LAWS OF WAR" (1868-1917)* (unpublished manuscript).

10. EDWARD HALLETT CARR, *THE TWENTY YEARS' CRISIS, 1919-1939* ix-x (1939); PAUL FUSSELL, *THE GREAT WAR AND MODERN MEMORY* (1975); Peter Krüger, *From the Paris Peace Treaties to the End of the Second World War*, in *THE OXFORD HANDBOOK OF THE HISTORY OF INTERNATIONAL LAW* 679 (Bardo Fassbender & Anne Peters eds., 2012); STUART ROCHESTER, *AMERICAN LIBERAL DISILLUSIONMENT IN THE WAKE OF WORLD WAR I* (1977); Stephen van Evera, *Why Cooperation Failed in 1914*, 38 *WORLD POL.* 80 (1985).

11. HULL, *supra* note 1, at 2.

lawyers, and military officers that weighed the contents and interpretation of these agreements and other laws and customs in making key decisions over the course of the war. These were often internal discussions, moreover, out of public view, indicating that concern for law was more than just a show for external audiences. Hull does not contend that policymakers always chose to go with the law, nor does she ignore the actual or perceived ambiguity in the law. Rather, she takes great care to understand points of contention within and between states, which in turn reveal the substantive attention law received in decision-making during the war. Hull's analysis makes clear that international law was an accepted centerpiece of conversation, not an afterthought.

Moreover, the cases show that custom and norms embodied in law, not only the material enforcement potential of formal treaty law, can shape states' decision-making. Hull also details policymakers' debates over the interpretation of agreements that did not go into effect or were of uncertain legal status, like the DoL. When the DoL was negotiated, according to Elihu Root, the expectation was that the ten great naval powers would agree on a code of naval warfare, "substitut[ing] uniformity and certainty for the diversity and obscurity from which international relations have too long suffered."<sup>12</sup> Yet the failure of the British House of Lords to ratify the DoL—due to domestic debates unrelated to the Declaration<sup>13</sup>—meant that it never went into effect. Hull observes that "[t]he DoL was . . . more advantageous to Britain as a neutral power than as a belligerent."<sup>14</sup> Even so, the admiralty and Foreign Office debated and sought to adapt to its rules (albeit with adaptations of its own<sup>15</sup>), and it substantively shaped debates until mid-1916 on whether and how to blockade Germany.

Hull is more critical of Germany's (more frequent) attempts to evade and interpret international law to suit its interests. Yet even Germany, she notes, was not wholly without concern for international law during the war. For example, the first German submarine attacks on enemy merchant vessels in 1914 were unplanned but carried out according to international law for surface ships. In addition, the decision to initiate unrestricted submarine warfare (USW) as state policy<sup>16</sup> was one of Germany's few fully coordinated decisions during the war—and perhaps its most controversial.<sup>17</sup> Chief of the high seas fleet Admiral von Ingenohl initially "refused on legal and humanitarian grounds to forward [the] . . . suggestion" to his superiors, relenting a week later under pressure from the naval

---

12. Elihu Root, *The Real Significance of the Declaration of London*, 6 AM. J. INT'L L. 583, 589 (1912).

13. Christopher Martin, *The Declaration of London: A Matter of Operational Capability*, 82 HIST. RES. 731, 755 (2009).

14. HULL, *supra* note 1, at 144.

15. *Id.* at 148, 158-61.

16. Unrestricted submarine warfare refers to the use of submarines in violation of international "prize" or "cruiser" rules governing how military ships may attack merchant vessels. These rules were formalized in the Hague Conventions and dictate that merchant vessels may not be sunk without warning. Both enemy and neutral merchant vessels must stop if confronted by a belligerent ship, which must be allowed to inspect the vessel for contraband (the rules also specify what constituted contraband). It is permissible to sink ships carrying contraband if it is not feasible to take the ship as a prize to the belligerent's home port. The crews of captured ships must be removed to safety before being sunk. These rules were devised prior to the development of submarines as offensive weapons. Submarines were neither large enough to take additional people from an attacked vessel on board, nor sufficiently staffed or typically near enough to home ports to take captured ships as a prize.

17. HULL, *supra* note 1, at 211.

officer corps.<sup>18</sup> At that point, the chancellor and members of the military and foreign office debated what international law did and did not allow, the ability to apply international law to new weapons like the submarine, and how neutral states might react. The government also sought legal cover, citing British legal violations as justification for reprisals. That approach, in turn, introduced the “flag ruse” and merchant vessel resistance as major points of contention in international law before (and after) the war. Beyond this, however, Hull observes that “[German] legal considerations were absent, or rather only present in their concern for the neutrals’ reaction.”<sup>19</sup>

Yet in this case, Hull is perhaps too quick to assume that the new submarine vessels had the capacity to follow existing international rules for surface ships regularly and safely. She asserts that the “most successful method” of using submarines was to use them “(almost) legally.”<sup>20</sup> However, this conflates the technical capabilities of weapons with their political capabilities. As she shows, Germany arguably could have met its political goals by restricting submarine warfare, especially in its relations with the United States.<sup>21</sup> Many submarine experts nevertheless contend that World War I demonstrated that it was unrealistic to apply cruiser rules to submarines given their technical capabilities and limitations.<sup>22</sup> This was not simply a matter of military advantage—although clearly cruiser rules took away the submarine’s key advantage of surprise—but also of the compromised safety of the vessels and their crews, which became more vulnerable to gunfire and ramming by armed merchant ships when they surfaced to carry out cruiser rule requirements. Thus, Germany might have been better off in its larger war aims by avoiding USW—this, as noted, has been a matter of debate—but whether its claims about the inability to use submarines in accordance with international law was just for show or also rooted in practical limitations of the weapons technology is less straightforward than Hull suggests.

Overall, therefore, Hull succeeds in her first goal to demonstrate that international law was the subject of regular and significant debate among three of the major belligerents during World War I. In this sense, international law “mattered.” Even so, the belligerents at times ignored international law, followed it inconsistently, or strategically manipulated it to meet other political or military ends. In the sense of shaping states’ behavior, there-

---

18. *Id.* at 216.

19. *Id.* at 217.

20. *Id.* at 266.

21. Scholars debate how close USW brought Germany to victory in the war. By bringing the U.S. into the war, Germany’s policy certainly hastened its own demise, and there are questions about whether it ever could have achieved its goals by relying on USW. See Avner Offer, *Bounded Rationality in Action: The German Submarine Campaign, 1915-18*, in *THE ECONOMICS OF RATIONALITY* 179 (1993). However, others have argued that Germany’s submarines “[conducted] such a war of attrition on merchant shipping as to threaten the very existence of nations dependent upon seaborne trade,” and Churchill later asserted that the German submarine campaign almost lost the war for Britain. See Ernest Andrade, Jr., *Submarine Policy in the United States Navy*, 35 *MIL. AFF.* 50 (1971); BERNARD BRODIE, *SEA POWER IN THE MACHINE AGE* 332 (1944).

22. See BRODIE, *supra* note 21; Jane Gilliland, *Submarines and Targets: Suggestions for New Codified Rules of Submarine Warfare*, 73 *GEO. L.J.* 975 (1985); PAUL G. HALPERN, *A NAVAL HISTORY OF WORLD WAR I* (1994); Howard S. Levie, *Submarine Warfare: With Emphasis on the 1936 London Protocol*, 65 *NAVAL WAR C. INT’L LEGAL STUD.* 27 (1993); John N. Petrie, *The Change*, 29 *McNair Papers* (1995); H.G. Rickover, *International Law and the Submarine*, 61 *U.S. NAVAL INST. PROC.* 1213 (1935); JULIUS STONE, *LEGAL CONTROLS OF INTERNATIONAL CONFLICT* (1959); V.E. TARRANT, *THE U-BOAT OFFENSIVE 1914-1945* (1989).

fore, international law did not always “matter.” Hull’s cases show that while states consistently debated the law, their compliance (i.e., their implementation of the law in practice) was mixed. For realists, this is a key point. Rhetoric can mask motives, realists insist, and morality is the product of the powerful.<sup>23</sup> Consequently, only states’ action can be assessed.<sup>24</sup> Thus, for international law to “matter” in realism, it must affect states’ actions or practice, not only their debates and discussions. Whether or not one agrees with realists on this count is beside the point here. For Hull to be most convincing in her second goal to counter realist claims about international law, she needs to do more to explore the compliance side of the story, examining why states adhered to and ignored international law on the battlefield and in occupied zones in practice.

Realism expects, first, that states will follow international law only when it advances their interests and, second, that international law reflects the interests of the relatively most powerful state or states in the system. When it comes to accounting for states’ noncompliance, Hull therefore may not be as far apart from realism as she sets out to be. First, as realists would expect, her cases show the major belligerents at times interpreting or ignoring the law according to their own political or military interests. States are flexible about international law in *A Scrap of Paper*, and their decisions about law are often instrumental, made in accordance with their perceived interests in the war.<sup>25</sup> For example, in planning to blockade Germany, Great Britain assessed how to rationalize and modify international law in strategically useful ways, and engaged in active diplomatic efforts to appease neutral states and businesses and legitimate its measures.<sup>26</sup> Indeed, Hull ultimately attributes British success in gaining neutral acquiescence to its blockade “to the nature of its government and the breadth and depth of its power.”<sup>27</sup> In the submarine case, she makes the uncontroversial observation that “the main impetus to throw over international law was Germany’s own weakness as a belligerent.”<sup>28</sup> It did not have the military capacity to operate successfully within the constraints of law. Germany too was keen to appease neutrals but lacked the resources to do so relative to Britain. Law thus became a tool for states to achieve military and political goals, most successfully used when coupled with greater capabilities and resources.

Second, that Germany much more readily violated international agreements than Great Britain would come as no surprise to realists: existing laws serve hegemonic interests, not the interests of the rising power. In the century before the war, hegemonic Great Britain had assumed a position as the enforcer of international law and used it as a means to protect its imperial interests.<sup>29</sup> International laws and their interpretation, including the

23. CARR, *supra* note 10, at 64; MORGENTHAU, *supra* note 2, at 6.

24. MORGENTHAU, *supra* note 2, at 6.

25. John Fabian Witt explores similar themes in his examination of international law in nineteenth century US warfare. See JOHN FABIAN WITT, *LINCOLN’S CODE: THE LAWS OF WAR IN AMERICAN HISTORY* (2012).

26. HULL, *supra* note 1, at 140-210.

27. *Id.* at 181.

28. *Id.* at 112, 217, 223.

29. Nicoletta F. Gullace, *Sexual Violence and Family Honor: British Propaganda and International Law during the First World War*, 102 AM. HIST. REV. 714, 737 (1997); Michelle Tusan, “Crimes against Humanity”: *Human Rights, the British Empire, and the Origins of the Response to the Armenian Genocide*, 119 AM. HIST. REV. 47, 51 (2014).

Hague Conventions, were themselves the product of politics and power. Hull points out that Germany had long disagreed with other states on the content of international law<sup>30</sup> and saw noncompliance as essential to achieve victory and upend the existing system in favor of its own.<sup>31</sup> This suggests ambivalence and opposition to an existing system of law, rather than necessarily to law in general. Indeed, systems of international law and incentives for compliance are not static, as James Whitman shows, but rather have changed with time and modes of warfare.<sup>32</sup> Eschewing one need not indicate distaste for all. Although Hull acknowledges that law reflects the interests of the powerful, she counters that it also limits the powerful.<sup>33</sup> Yet her cases generally suggest that powerful states could and did work around international law when needed.

In the end, if states follow international law when their interests and the law coincide, realist explanations for compliance at the very least remain plausible.<sup>34</sup> Hull's cases make it difficult to empirically untangle interests or laws as independent forces driving state behavior. Hull would, for instance, need Germany to comply despite its military interests. Expanding her (albeit already expansive) study to include other belligerents such as the Ottoman Empire on the side of Germany<sup>35</sup> or Russia, an autocracy with a hand in creating nineteenth century international law,<sup>36</sup> might have given Hull more empirical leverage to move away from realism. However, if, as she also contends, international law *protects* national interests<sup>37</sup> and German noncompliance is a product of its weakness, then she may not undermine realist ideas so much as support them.

## II. WHEN AND WHY DOES INTERNATIONAL LAW MATTER?

Although Hull seeks primarily to bring international law back into the story of World War I, it is in explaining variation in when and why it matters that her account moves furthest away from realism. Military advantage and power considerations may encourage or necessitate noncompliance, but her picture of national interest as it motivates compliance is more complex. In particular, she highlights regime type, linked to civil-military relations, public opinion, and states' concern for international reputation, in prompting compliance with international law. Hull is less systematic in exploring these motives. In fairness, she has not explicitly set out to do so. Nevertheless, her findings offer important insights into ongoing debates on what generates compliance with international law in the

---

30. HULL, *supra* note 1, at 58.

31. *Id.* at 268.

32. JAMES Q. WHITMAN, *THE VERDICT OF BATTLE: THE LAW OF VICTORY AND THE MAKING OF MODERN WAR* (2012).

33. HULL, *supra* note 1, at 320.

34. *See* Downs, Rocke & Barsoom, *supra* note 2, at 380; GOLDSMITH & POSNER, *supra* note 2.

35. MUSTAFA AKSAKAL, *THE OTTOMAN ROAD TO WAR IN 1914: THE OTTOMAN EMPIRE AND THE FIRST WORLD WAR 21-22*, 78 (2008). Aksakal touches on Ottoman views of international law, suggesting a rejection of international law as subject to double standards and unable to meet the needs of Ottoman security interests. *Id.*

36. On Imperial Russia and international law, see HOLQUIST, *supra* note 9; Peter Holquist, *The Russian Empire as a "Civilized State": International Law as Principle and Practice in Imperial Russia, 1874-1878*, NAT'L COUNCIL EURASIAN & E. EUR. (2006); Peter Holquist, "Crimes against Humanity": *Genealogy of a Concept (1815-1945)* (unpublished manuscript).

37. HULL, *supra* note 1, at 199.



absence of a world government to enforce it.

Hull contrasts Great Britain's stronger interest in compliance with the less compliant Wilhelmine Germany, linking their differences broadly to their regime types. First, democratic Great Britain has stronger civilian control of government decision-making, which pushes it to be more attentive to diplomacy and international law. Cabinet oversight and its legal and diplomatic expertise feature as important components of British success in curbing "military proclivities" and bringing about neutral support for its policies.<sup>38</sup> Although categorizing Germany's regime type in this period is especially complex,<sup>39</sup> Hull attributes its elevation of "military necessity" over international law to its centralized decision-making apparatus and the military's dominant role in it.<sup>40</sup> She notes that although the *Auswärtiges Amt* (foreign office) was more cautious and attentive to law, it lost leverage over the military early on in the war.<sup>41</sup> Civilian leaders in Germany allowed military leaders to define national security and make war plans accordingly, "subordinat[ing] their misgivings to military expertise."<sup>42</sup> This regime-centric argument accords with liberal accounts of international law, in which democracies are more attentive to international law because of their experience with the domestic rule of law, constitutionalism, and cosmopolitanism.<sup>43</sup>

Second, Hull emphasizes that public opinion and public accountability helped push Great Britain to greater compliance with international law. Democracy required public backing for Britain to act, while concern for public backlash in some cases kept it attentive to the constraints of international law.<sup>44</sup> Policymakers were also aware that creating or violating international law meant convincing "public opinion"<sup>45</sup> and, therefore, engaged in public campaigns and propaganda throughout the war. Absent the German case, this might make sense folded into regime type. However, Hull also shows that the German government faced public pressure. Except in the German case, public opinion fed pressures on the government to violate international law, as in the case of USW.<sup>46</sup> This comparison serves to point out both that non-democratic governments may at times be subject to public pressures<sup>47</sup> and that public accountability does not necessarily mean compliance with international law. Governments may behave badly because of the public, not just in spite of it. What the public wants and why are complex issues.

Finally, concern for international reputation frequently appears as a driving force

---

38. *Id.* at 330, 178.

39. See Ido Oren, *The Subjectivity of the "Democratic" Peace: Changing US Perceptions of Imperial Germany*, 20 INT'L SECURITY 147 (1995).

40. HULL, *supra* note 1, at 161, 224.

41. *Id.* at 287, 291. Others, however, assert that civilian control of the military was "relatively firm" until mid-1916. See MICHAEL C. DESCH, *CIVILIAN CONTROL OF THE MILITARY: THE CHANGING SECURITY ENVIRONMENT* 76 (1999).

42. HULL, *supra* note 1, at 25.

43. See generally Michael W. Doyle, *Kant, Liberal Legacies, and Foreign Affairs*, 12 PHIL. & PUB. AFF. 205 (1983); Anne-Marie Slaughter, *International Law in a World of Liberal States*, 6 EUR. J. INT'L L. 503 (1995).

44. HULL, *supra* note 1, at 36, 156, 151.

45. *Id.* at 152.

46. *Id.* at 241, 258, 261.

47. See Jessica L. Weeks, *Autocratic Audience Costs: Regime Type and Signaling Resolve*, 62 INT'L ORG. 35 (2008).

behind states' compliance with international law. Hull argues that a state's international reputation and its care for international law are inexorably intertwined.<sup>48</sup> Although she less clearly accounts for why some states are more invested in their reputation than others,<sup>49</sup> Hull observes in several instances that Britain complied because it wanted its appearance to others to reflect how it saw itself, as a law-abiding "civilized" nation.<sup>50</sup> Moreover, as a judgment of a state's character and not simply the legality of its actions, the threat of international condemnation and revulsion may have constrained British action in some cases even where decisions might have been technically permissible under the law.<sup>51</sup> In contrast, Germany's violation of Belgian neutrality instantly ruined its reputation.<sup>52</sup> However, it seemed indifferent to its "uncivilized" image, which permitted it a simplified approach to international law.<sup>53</sup> Its care for how neutral states would judge its actions was born of concern about the strategic consequences of their reactions, not of confirming their view of Germany's self-image. Beyond the neutrals, Germany seems to exhibit little concern for the more generic "world opinion." Unlike Britain, which had learned from its international embarrassment in the Boer War, Germany seemed to have little awareness of how its actions would play in the eyes of the world or how to manipulate that sentiment.<sup>54</sup> By the end of the war, however, Hull mentions that the British saw Germany as sensitive to "outside opinion" and embarrassment.<sup>55</sup> Rather than regime type, perhaps this then is a matter of lessons learned: States realize the value of a good reputation once they have lost it.

Hull's findings thus introduce important questions about why law matters and contribute to ongoing debates in the study of international relations and international law about why states comply with international law.<sup>56</sup> In many ways, these debates echo those in law and other social sciences about why people obey the law.<sup>57</sup> Does law matter for the sake of law? What are incentives promote compliance with the law? Are some states more inclined to follow international law than others and, if so, why? Hull suggests on no uncertain terms that this is the case but shows that it is perhaps not because of legal and normative obligation directly. Rather, complex combinations of national interest, identity, public opinion, and regime type intervene to explain states' decisions to comply—and ignore—international law.

48. HULL, *supra* note 1, at 132, 290.

49. For a discussion on reputation as a social goal linking state identity and interests, see ERICKSON, *supra* note 6.

50. HULL, *supra* note 1, at 40, 151, 152, 200, 205-06, 237, 297.

51. *Id.* at 108, 297.

52. *Id.* at 41.

53. *Id.* at 132.

54. Gullace, *supra* note 29, at 734, 741

55. HULL, *supra* note 1, at 314.

56. In addition to sources in note 6, see also Abram Chayes & Antonia Handler Chayes, *On Compliance*, 47 INT'L ORG. 175 (1993); Downs, Rocke & Barsoom, *supra*, note 2; THOMAS M. FRANCK, THE POWER OF LEGITIMACY AMONG NATIONS (1990); GOLDSMITH & POSNER, *supra*, note 2; Ryan Goodman & Derek Jinks, *How to Influence States: Socialization and International Human Rights Law*, 54 DUKE L.J. 621 (2004); Andrew T. Guzman, *A Compliance-Based Theory of International Law*, 90 CALIF. L. REV. 1823 (2002); LOUIS HENKIN, HOW NATIONS BEHAVE (1968); Harold Hongju Koh, *Why Do Nations Obey International Law?* 106 YALE L.J. 2599 (1997); Beth A. Simmons, *Compliance with International Agreements*, 1 ANN. REV. POL. SCI. 75 (1998).

57. Tom R. Tyler, *Understanding the Force of Law*, 51 TULSA L. REV. 507 (2016).

## III. CONCLUSIONS

*A Scrap of Paper* is an impressive and important account of World War I and should be read not only by historians, but also by scholars of international law, international relations, and political science. Hull shows that international law was not simply an occasional topic of conversation for policymakers in belligerent states, but was a pervasive point of concern, steeped in complex debates and strategic considerations. Hers is a nuanced picture of international law in action. Policymakers discuss interpretation, worry about public image, and weigh the material and social costs and benefits of compliance. Differences in domestic politics, institutions, national identity, and military and legal cultures spill over into state behavior in the international realm. The findings in *A Scrap of Paper* do not necessarily suggest that realism is wrong but rather that the causes of states' compliance and noncompliance with international law are multiple and more complex perhaps than any one theory of international relations might allow.

These lessons resonate strongly in contemporary world politics. As in the period around World War I, new defense technologies today challenge and potentially undermine accepted international laws and norms. Drones, cyber warfare, and lethal autonomous weapons systems all call attention to and question existing notions of responsibility and authority, what it means to make decisions in wartime, and even what it might mean to be at war. It is not yet clear how well current regimes can adapt to these new technologies, or how new rules will be hammered out and accepted by states with diverse power capabilities and interests. As the international community faces the political, technical, legal, and military challenges of today, it may do well to learn from the evolution of international law and norms in the early twentieth century. Moreover, as China and Russia seek to flex their military muscle in their respective neighborhoods, the international community finds a diplomatic solution to the Iranian nuclear program, and the U.S. war on terror continues to come up against accepted legal discourse, it is clear that international law still "matters." The questions will be how, why, and to what effect?