
# THE CONSERVATIVE HUMAN RIGHTS REVOLUTION

*European Identity, Transnational Politics, and the Origins of the European Convention*

MARCO DURANTI

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To my parents

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# The Conservative Human Rights Revolution

# Introduction

The European Court of Human Rights, whose conservative origins are traced here, is charged with ruling on the application of the 1950 European Convention on Human Rights (ECHR) and associated protocols. These treaties are designed to protect individuals from state coercion—for example, by prohibiting their arbitrary arrest and detention, securing their privacy and possessions, and guaranteeing their freedom of conscience and expression. The judgments of the European Court of Human Rights have touched on a wide range of contentious subjects, such as the banning of Islamic headscarves and the display of crucifixes in schools, the expulsion of refugees and Romani people, the rights of terrorism suspects and convicted sex offenders, same-sex marriage and adoption, racist speech and genocide denial, life prison terms and the voting rights of prisoners, and assisted suicide.[1]

Seated in Strasbourg, the European Court of Human Rights is a judicial body with formidable supranational powers. Its judges, who are nominated by governments but serve in an independent capacity, have the authority to determine whether a state party to the ECHR has violated the human rights of individual claimants under its jurisdiction. If a state is found guilty, it can be required to give redress and amend its laws, judicial decisions, and administrative policies accordingly. The rulings of the Strasbourg court are binding on both state and nonstate entities. National legislatures and executives cannot overturn its judgments, nor can domestic courts, which themselves are responsible for implementing the ECHR in those countries that have incorporated the treaty into their domestic legal systems. Any private individual or association residing on the territory of one of its signatories is entitled to lodge a claim directly with the Strasbourg court, as long as all domestic remedies have been exhausted.

The sweep of the ECHR's controls on the behavior of states toward their own citizens is without parallel in the field of international public law. Some have described the Strasbourg court as a Supreme Court of Europe with

prerogatives of constitutional review akin to that of the mighty US Supreme Court. No other international tribunal, including the various Hague courts and the Inter-American Court of Human Rights, possesses a similar capacity to act on an application from a private individual concerning a violation of his or her human rights. Nor has any UN body tasked with punishing human rights offenders handled more than a fraction of the Strasbourg court's caseload. The International Criminal Court of The Hague, for example, issued its first judgment in May 2012, nearly a decade after its creation. By comparison, the European Court of Human Rights issued 1,093 judgments in 2012 alone.

The Council of Europe in Strasbourg, not the European Union (EU), oversees the operations of the European Court of Human Rights. Founded in 1949 amid hopes that it might one day evolve into a European federation of states, the Council of Europe now sees its mission as largely confined to the promotion of human rights. The Strasbourg court is sometimes confused with the European Court of Justice in Luxembourg, which concerns itself with the application of EU law rather than ECHR law. The European Court of Justice was established as an integral part of the European Communities. These were predecessors to the European Union that emerged from accords signed in 1951 and 1957 between six continental states: Belgium, France, Italy, Luxembourg, the Netherlands, and the Federal Republic of Germany. The original signatories of the ECHR comprised the above countries, as well as Denmark, Greece, Iceland, Ireland, Norway, Sweden, Turkey, the United Kingdom, and the Saar (then a French protectorate). The Strasbourg court's jurisdiction now extends across forty-seven nations, including the entirety of the European Union and much of the former Soviet Union. There has been a great deal of wrangling among European jurists over the relationship between the jurisprudence of the ECHR and European Union, as the two over time have become increasingly intertwined.

The politics of the ECHR also cannot be easily disentangled from those of the European Union. This is particularly the case in Britain, where those inveighing against the "Eurocrats" in Brussels and Strasbourg rely on similar lines of argumentation, contending that neither has any business overriding British parliamentary majorities and infringing on British national sovereignty. To submit to supranational mechanisms of control is, in the view of these Euroskeptics, tantamount to eviscerating British democracy and independence, which an earlier generation of Britons sacrificed so much to preserve. The British, they assert, do not need foreign judges to tell them how to conform to human rights standards, and their country would be better off substituting for the ECHR a new national bill of rights of its own devising. Recently, calls for the United Kingdom to withdraw from the ECHR have multiplied. Right-wing news outlets and politicians have been at the forefront of those denouncing the Strasbourg court for its interference in the workings of the British legal system, lobbying the British government to refuse compliance with its rulings.

Much of this criticism rests on the presumption that the Strasbourg court has of late exercised powers contrary to the original intent of the framers of

the ECHR. Under this interpretation, the European Court of Human Rights outlived its usefulness as soon as the menace of communism receded from the region with the end of the Cold War. Such critiques are bolstered by conventional understandings of the genesis of the ECHR, which posit that its progenitors only had on their minds the defense of democracies on the continent. Hence, critics argue, there is little reason to allow such an anachronism to interfere with the workings of the United Kingdom's venerable legal systems or the actions of democratically elected representatives of the British people. Those coming to the defense of the Strasbourg court counter that the ECHR is a "living instrument" that must be interpreted dynamically—that is, according to present-day conditions rather than the postwar context in which it was conceived. The reigning assumption among the Strasbourg court's detractors and supporters is that the ECHR was conceived in order to shield its signatories against the threats of communism and fascism alone. On both sides, it is presumed that little thought was given after the Second World War to the need for supranational safeguards of British liberties. Arguments today in favor of the legitimacy of the Strasbourg court's prerogatives are therefore rarely grounded in original intent.[2]

In fact, communism and fascism were not the only targets that the founders of the European human rights system had in their sights. If we examine closely the ECHR's origins before the negotiations between states that immediately preceded its adoption, others come to light. Features of European institutions today viewed as recent innovations were in fact present from their inception. The difference is that, in many cases, the positions of "pro-Europe" and "anti-Europe" forces on the political spectrum have been reversed. The European human rights system was conceived by movements for European unity, transnational organizations that operated independently of governments. For conservatives in their ranks, new supranational mechanisms were indeed required to protect the "West" against communism and fascism. At the same time, they saw in the construction of a European judiciary a means of overcoming opposition at home to a number of hotly contested conservative policies. This was above all the case in Britain and France, where right-wing minorities feared for their basic liberties at the hands of left-wing majorities. Conservatives enshrined human rights as European values in the service of a nostalgic Christian vision of the European legal order, not a liberal cosmopolitan one. From the outset, the fate of the European Court of Human Rights was inseparable from that of the European project as a whole.

This book explores the cultural, intellectual, and political foundations of the European human rights system across the first six decades of the twentieth century. It also presents a new interpretation of the roots of Europeanism and Euroskepticism, one that stresses the ethical rather than technocratic aspects of European integration. Along the way we will visit not only peace conferences and pan-European congresses but also the pavilions of world's fairs and the halls of temples of peace. Postwar European institutions were

the product of an act of historical imagination. Visual culture and sites of memory are as central to the history of international law and organizations as political dealmaking and speechmaking. The ECHR was the result of an act of imagination. Though much of the book is devoted to the early part of the twentieth century, the bulk of its emphasis is on the hinge years 1946 to 1950, when the movements for European unity were at the height of their influence. This was a period in which there emerged a narrow window of opportunity for their leadership to catalyze a revolution in the international architecture of Europe and shape it in accordance with their conservative views.[3]

The most famed protagonist of this conservative human rights revolution was Winston Churchill, whose realism was coupled with a romantic sensibility that did much to mold his approach to foreign affairs. A central aim of this book is to understand why in these years Churchill placed himself at the head of the campaign for a European union and European human rights court. Another key figure in the British contingent was the former Nuremberg trials prosecutor David Maxwell Fyfe (later known as Lord Kulmuir), likewise a Member of Parliament (MP) on the free-market wing of the Conservative Party. The anti-fascist credentials of these men helped distance the cause of European unity from its association with Axis propaganda, as did the participation of numerous individuals who had participated in the continental Resistance. Churchill's involvement was critical to generating popular support for the creation of European institutions at a moment when most of those continental statesmen later anointed the "Founding Fathers of the European Union"—including Konrad Adenauer, Alcide De Gasperi, Jean Monnet, and Robert Schuman—had yet to take center stage. Maxwell Fyfe, by contrast, was most effective as a draftsman, doggedly insisting that a European human rights treaty not be modeled too strictly on the 1948 Universal Declaration of Human Rights.

A number of French contemporaries also made important contributions. Among them were Alexandre Marc, one of the founders of the philosophical school known as personalism; Louis Salleron, France's leading theorist of corporatism; and Pierre-Henri Teitgen, a law professor turned Christian democratic politician. Critics of capitalism and Marxism alike, all three were Catholic social conservatives. Salleron and Teitgen had made starkly different choices following France's capitulation to Germany, the former working for the authoritarian Vichy regime, the latter joining the vanguard of the Resistance. Marc, a self-described "nonconformist" who was close to individuals on both sides, had been forced to flee to Switzerland on account of his Jewish ancestry.

Without their collective efforts, it is unlikely that the ECHR would have provided for the creation of the European Court of Human Rights or permitted individuals to petition the Council of Europe directly. Both of these provisions were optional clauses of the original treaty in part due to the British Labour government's suspicion that the Conservative Party might make use of them to stymie its economic program. Conservatives also greatly influenced the selection of which rights would be safeguarded under European human

rights law. To the dismay of many socialists, they ensured that the right to property and the right of parents over the religious content of their children's education would be codified in treaty law, while the rights to employment, health care, and social security would not. When these questions arose during the intergovernmental negotiations over the ECHR and its First Protocol, representatives of member state governments ultimately deferred to the Council of Europe's Consultative Assembly, which was under the sway of the conservative leadership of the European unity movements.

To call these figures conservative for the purposes of the present inquiry is not to say that they held uniformly conservative views or agreed with one another on all the issues of the day. Indeed, many vehemently denied being conservatives and at times were in violent disagreement with one another. What is indisputable is that each took markedly conservative positions on some, if not all, of the major political questions of their time. The argument presented here is that it was the distinctly conservative aspects of their complex worldviews that explain why they took the lead in championing the creation of a European human rights court in contrast to the initial indifference or outright hostility of Western European socialists.

Conservative Europeanists invoked international human rights norms for different purposes. Nevertheless, they were united in their belief that a democracy in which tyranny of the majority held sway was little better than a dictatorship. The rights of the minority, like the autonomy of the individual and civil society, were not to be sacrificed at the altar of the unitary nation-state. Pluralism, not popular sovereignty, was their watchword. While their socialist opponents called them anti-democratic, conservatives saw their aim as protecting democracy from itself.[4] Totalitarianism, they believed, was a contagion whose carriers were not limited to communists and fascists, for it could metastasize within democratic movements and persist even after the fall of authoritarian regimes. Socialism was alleged to be its breeding ground, especially that of the Marxist variety but so, too, were certain aspects of liberalism and republicanism to blame. With domestic courts having proven themselves unable or unwilling to uphold the rule of law against overweening executives, in their eyes, a new international solution was needed. For conservatives, this was not to be found in what they regarded as the soulless internationalism of liberal technocrats, with their naive faith in scientific and technological progress. A return to tradition and older forms of community would form the bedrock of a free and united Europe, not technocracy.

None of this is to deny the centrality of left-wing activism to the history of human rights writ large. In the domestic sphere, the Left had for much of the past century been at the forefront of championing civil liberties, ending discriminatory measures against women and minorities, expanding suffrage, and securing economic and social rights. At the United Nations, socialists made a significant contribution to the drafting of the Universal Declaration, a successor to the revolutionary rights texts of the modern era.

This nonbinding resolution, like most new postwar Western European constitutions, had a decidedly social democratic orientation. Communists, too, exercised significant influence in the UN Human Rights Commission, just as they did in many of the constituent assemblies formed after the liberation of Europe from Axis rule, including those of France and Italy. They could justifiably claim to espouse the most egalitarian and universalist conception of fundamental rights of any major political movement in Western Europe when it came to promoting the rights of colonized peoples and workers.[5]

To be sure, it would be reductive to make the entirety of the motives behind the formation of the European human rights system solely a function of conservative politics. The European Court of Human Rights would not have emerged if not for a common repudiation of fascism among the broad coalition of forces who had fought the Axis powers. Nor would it without a fear of communism felt well beyond conservative circles. Without a doubt, socialists believed in the necessity of protecting the vast majority of the freedoms enumerated in the ECHR, if not the more controversial education and property rights codified two years later in its First Protocol. Indeed, these treaties would never have been adopted without the prior approval and/or input of hundreds of persons from a wide range of backgrounds. Their part in this story should not be disregarded.

Still, in the end, a surprisingly small group of individuals shaped the basic contours of the European human rights system. In contrast to the prominence of women at the UN Human Rights Commission, this was an overwhelmingly male affair, with the exception of the now forgotten humanitarian Hélène de Suzannet, who founded the right-wing precursor to Amnesty International. Just because one can find the names of certain figures listed as attendees at a meeting or as consultants on a report does not mean that they made a significant impact on the resulting text. Measuring the influence of historical actors on the resulting structures of European human rights law requires expanding our investigation beyond the official publications of the Council of Europe and the government records of a single Council of Europe member state. To this end, the conclusions reached here are based on unpublished archival material from six countries—Britain, France, Germany, Italy, the Netherlands, and the United States—including not only state papers but also the private papers of key individuals and movements, as well as dozens of contemporary news sources reporting on the events in question.

Following the lead of recent historical scholarship on human rights, this study integrates the history of political concepts, imagery, and languages—that is, the superstructure of politics—with the history of political institutions, parties, and mores—that is, how politics actually works.[6] Studies of the genesis of the ECHR have stressed the importance of the Cold War and imperialism but not domestic and transnational politics. Historians have approached this subject primarily from the perspective of the states involved in the drafting of the final text of the treaty.[7] The vast majority of historical research has been done on English-language sources, particularly those found in the British National Archives. Jurists have been most interested in the legal

principles at play in the debates in the Council of Europe at the time.[8] Those adopting a sociolegal approach have expanded this frame through studies of transnational legal networks, as well as the interaction between law and politics in particular countries, but without providing much detail in so far as the origins of the European human rights system are concerned.[9] While some scholars have touched on the role of European identity, integration, and memory, little empirical work has been done in this regard.[10]

What remains to be explained is why in the aftermath of the Second World War proposals for the creation of a European human rights court attracted the disproportionate support of conservatives and disproportionate opposition of socialists. Socialists also tended to be less enthusiastic about European integration than their conservative counterparts. It is true that those who participated in European assemblies were eventually prepared to accept a European human rights text of some kind once conservatives had taken the initiative of placing it on the agenda. What polarized Western Europeans was the question of which rights such a charter would guarantee and whether it would be implemented by a supranational version of the US Supreme Court—that is, a European high court empowered to overrule the decisions of national executives, judiciaries, and legislatures, as well as deal with claims of rights abuses submitted by private parties.

The European Court of Human Rights was an object of great controversy even before its creation. Judiciaries had long been viewed with hostility on the Left. This was particularly true of Britain and France. In Britain, memories were still fresh of the role that courts had played as bastions of conservative assaults on trade unions and economic planning, as well as their complicity in repressive measures against various left-wing organizations. The ruling Labour Party had not failed to take notice of the US Supreme Court's efforts in the 1930s to overturn Franklin Roosevelt's New Deal. It advocated a strict adherence to the principle of parliamentary sovereignty, whereby acts of parliament were not subject to judicial review or other constitutional constraints. In France, judicial power was associated with the aristocratic privileges of the *ancien régime*. Ever since the French Revolution, the French Left had inveighed against the creation of a reactionary "government of judges" capable of overriding the will of the people as expressed in the National Assembly.[11]

The ECHR's present-day imposition of constraints on democratic institutions in states wherein there exists no imminent danger of an authoritarian takeover is no innovation. In domestic affairs, a European supreme court was widely regarded as a mechanism for realizing what socialists described as a discredited conservative agenda too unpopular to be enacted through democratic means. The most avid advocates of a European supreme court were those conservatives who before the Second World War had championed the independence and constitutional prerogatives of domestic courts. They reasoned that the ever-expanding state bureaucracies in their countries, once placed at the disposal of socialist governments backed by left-wing parliamentary majorities, posed a threat to their human rights. Of particular

concern to conservatives were the fundamental freedoms of property owners, ecclesiastical schools, and political oppositions. They claimed that these contested rights, which were codified in a more general form in the ECHR's First Protocol, had been violated not only under communist regimes but also in the parliamentary democracies of Western Europe.[12]

It is said that human rights are akin to a secular religion.[13] Some of the framers of European human rights law took this analogy quite literally. A new court whose legal authority and moral suasion mirrored that of the medieval Church was to be constructed from the wreckage of a lost Christian civilization. For some Catholic conservatives, the spiritual reunification of Europe required the subordination of parliamentary democracy to what they called "supranational justice," a term that rearticulated an older belief that transnational Christian norms should constrain the exercise of sovereign power. Envisioned as a successor to the medieval charters of old, a European human rights treaty held the promise of strengthening the autonomy of Catholic churches, towns, and regions, as well as associations of Catholic peasants and workers.[14]

Today, human rights organizations are no strangers to criticism of their efforts on behalf of political prisoners and terror suspects. Perhaps it should not surprise us, then, that, in the late 1940s, some governments initially withheld their support for a European human rights court to which private citizens could appeal on these grounds. It was feared that individuals imprisoned at the end of the Second World War for political crimes would take advantage of this mechanism to demand that they be released or retried. Some in the European unity movements believed that those accused of collaboration with the Axis enemy had not been afforded due process, freedom of the press, and other human rights to which they were entitled. Others, such as Churchill, argued for an end to denazification and the prosecution of German army officers for war crimes. In the name of promoting reconciliation, these conservatives called for greater leniency or outright amnesty. They were unhappy that, to varying degrees across Europe, the Left had taken advantage of postwar purges to disenfranchise and silence political rivals, seize the assets of landholders and industrialists, and rid armies, bureaucracies, and judiciaries of conservatives.[15]

Involvement in the creation of the European human rights system offered conservatives the opportunity to disavow right-wing authoritarianism, which many had once argued was preferable to left-wing revolution and democratic dysfunction, without requiring them to repudiate their prewar worldviews. It placed a renewed emphasis on the anti-statist, libertarian dimensions of conservatism. Yet given the various derogations, exceptions, and limitations codified in European human rights law, conservatives were not compelled to renounce their support for extraordinary repressive measures against subversive forces at home and abroad. The conservative human rights revolution was a testament to continuity in the underlying principles of conservative ideology but also to changes in the moral language of conservatism and the

implementation of conservative policies. This was in part because conservatives made a virtue of adaptability in contrast to what they viewed as the doctrinaire quality of left-wing politics.

The vision of the Strasbourg court's conservative inventors was in the spirit of its current doctrines of dynamic interpretation and the margin of appreciation, which posit that the application of European human rights law varies according to time and place. According to conservative internationalists who subscribed to the ethos of nineteenth-century romanticism, as Churchill did, the implementation of human rights norms was best done contextually rather than in a formulaic, uniform fashion that failed to account for the distinctive qualities of the world's diverse communities, cultures, and civilizations. From a more instrumental perspective, romantic Europeanists framed their human rights initiatives in such a manner that colonial subjects and communists would not be entitled to equal protection as they were not considered to belong to the historical community of European peoples who honored the ethical inheritance of the West.[16]

Human rights served as a basis for admission to European organizations of states long before the expansion of the European Union into Eastern Europe and the denial of entry to Turkey. The coupling of European integration with a human rights treaty legitimized the creation of a noncommunist bloc during a delicate moment of transition in European international relations. During the late 1940s, there was no consensus among Western Europeans as to how much hope to hold out for continued cooperation with the Soviets and the degree to which they should be careful not to antagonize them. For conservative Europeanists, to be a "good European" required committing oneself to respecting "human rights and fundamental freedoms," understood as civil liberties rather than social rights. This not only justified barring erstwhile communist allies, including Western European communist parties, from participating in the Council of Europe. It also smoothed reconciliation with Germany by providing Germans with the opportunity to distance themselves from their Nazi past.[17]

The present study is not meant to supplant its predecessor, A. W. Brian Simpson's *Human Rights and the End of Empire: Britain and the Genesis of the European Convention* (2001). Readers interested in learning more about the intricacies of the relevant diplomatic negotiations, legal mechanisms, and colonial rights regimes should consult Simpson's careful exposition of the views of British jurists and officials on such matters. Nor do I dwell at length on the proceedings that the Council of Europe itself has published in a multivolume collection known as the *Travaux Préparatoires*.[18] A number of legal scholars have already used this documentation to great effect in their investigations into the ECHR's original intent.[19] Though I revisit some of the same source material, my aim here is to open new lines of inquiry rather than reproduce their findings.

The book is divided into three parts. Part One recounts the cultural origins of international law and organization in Europe, as well as the role that colonialism and foreign policy played in forging the European human rights system. It explores the ethical dimensions of European identity and European integration from the Hague peace conferences before the First World War to the creation of the Council of Europe after the Second. Part Two shifts the book's focus to postwar domestic politics, investigating how British free-market conservatism and French social conservatism decisively shaped European human rights law at the moment of its invention. These chapters will be of particular interest to those curious about the place of human rights in neoliberal and Catholic political thought. Part Three elaborates on the book's central arguments while bringing into relief the motives and worldviews of its chief protagonists against the wider backdrop of the immediate postwar period. Aimed at students of European and international history, this section revisits longstanding scholarly assumptions about postwar European integration, conservatism, and human rights. The Conclusion evaluates the merits of the conservative human rights revolution and grapples with the challenge of judging the moral choices that conservatives made in the middle decades of the twentieth century.

The Epilogue reflects on how these findings shed new light on the crisis now besetting the European Union. I did not set out to have this book serve as a kind of usable past. Given the salience of its subject matter to recent events, however, I see nothing wrong with rendering it a vehicle for uncovering the possibilities of the present. Though the conservative human rights revolution arose from the ashes of the two world wars, it continues to exercise a gravitational pull today. It is my hope that a better comprehension of its origins might open new avenues of thought and action in Europe's uncertain future.

PART ONE }

# European Memory, Human Rights Law, and the Romantic Origins of International Justice (1899–1950)

1 }

# The Romance of International Law

## A Romantic Approach to the History of International Law

Where does the history of human rights begin? The answer depends on how closely we cleave to today's conventional definition of human rights as universal, equal, and inalienable rights. In the field of international law, the greater the degree to which states have accepted binding supranational constraints on the treatment they accord the populations on their territories, the less equal, universal, and inalienable human rights have become. This is not simply a byproduct of the process of translating lofty principles into legal practice or the stinginess of government officials when asked to give up their cherished prerogatives. It is also a function of the particular cultural context in which human rights law has taken root in a given time and place.

One might say that each defining text in the genesis of international human rights norms has served as a kind of totem around which peoples have come together to reenact their historical memory. Or perhaps a better metaphor is that of a tapestry in which a jumble of memories are woven together into a single grand narrative, one meant to inspire a sense of collective mission and smooth differences of opinion among its crafters. If international agreements could not exist without the individuals who conceived of them, drafted them, and lobbied governments to accede to them, then neither could they exist independently of how these actors imagined themselves as part of an ethical community whose members shared a common history and destiny. Without this historical consciousness—or at least the veneer of one—achieving a successful result would be challenging indeed. It took more than diplomatic niceties to ease the nerves of disparate parties anxious about the prospect of giving one another greater latitude to interfere in one another's affairs. So, too, did it require more than a press conference to prop up the legitimacy of a treaty arrangement at home, for the populace and local elites were no less fearful of what might transpire if part of their nation's sovereignty were ceded to foreign powers. Articulating the justification for international agreements

in the language of history and memory made them palatable. Everyone loves a good story, particularly one that appeals to both head and heart.

European human rights law, like international law more generally, did not emerge virgin from jurisprudence, philosophy, and religion, nor was it a mechanical outcome of cold calculations of interest. Its progenitors were persons of flesh and blood who relied on their collective imagination as much as their knowledge, their shared sensibilities as much as their sense, their common intuitions as much as their individual wiles. They debated the merits of this or that article in buildings of brick and mortar—or, if they were so lucky, lavish palaces of granite and marble. They might sit beside one another underneath arches and paintings that captured the aesthetic of a particular historical epoch. Rarely were these negotiations hermetically sealed off from the outside world. If the meeting was important enough, journalists gathered by the dozens, even hundreds, while the usual suspects—activists, intellectuals, politicians—were never at a loss for commentary. When the sessions came to a close, one returned back home or, in any case, back to one's daily professional routine—that is, back to conversing with one's compatriots, colleagues, and co-conspirators, usually in a very different manner than one did in the transnational exchange just underway. As the usual patterns of behavior and social roles were quick to reassert themselves, the challenge of integrating the particularities of one's culture with the universality of the human experience was a deeply personal matter, not just an abstraction.

Just as every such episode had its own unique cast of characters and dynamics, so, too, did the basic understanding of what was meant by human rights differ from text to text, context to context. Not only was the equal and universal application of human rights standards a matter of dispute but the kinds of rights considered the property of humanity were, too. Indeed, who properly qualified as human for the purpose of declaring a right universal was rarely a settled issue. The most ready solution to this conundrum was to paper over such differences by employing ambiguous phrasing that gave the appearance of unanimity while leaving the question of principle unresolved. Another was to use language that took on different meanings for the different players involved, leaving everyone coming away believing that they had scored points against their rivals. Ultimately, what allowed such convenient fictions to pass muster was a sense among all parties that, however much they were at odds with one another when sparring on the political chessboard, at some deeper level there were fundamental ethical values that united them, even if these could only be intuited rather than articulated as such.

The history of international law in the late modern era is inseparable from the history of internationalism. Internationalist ethics were forged at the nexus of history and memory. From the late nineteenth century onward, European visions of the international order assumed contrasting orientations toward modernity. Technocratic internationalists shared a liberal faith in

progress and reason, believing they could harness for the good of humanity the material transformations wrought by capitalism, industrialization, and globalization. Romantic internationalists, by contrast, looked back to an idealized deeper past to overcome the centrifugal forces of the modern age, conceiving of time as cyclical rather than linear. Whereas technocrats understood their enterprise as an exercise in the application of universal scientific principles derived independently of culture and religion, romantics exalted the particular attributes of distinctive communities of memory as expressed in cultural artifacts and religious symbolism.[1] Technocratic and romantic forms of internationalism were by no means incompatible. Some internationalists cast technical innovations in romantic terms, while others drew on a technocratic vocabulary to give a modern sheen to their efforts to reverse the wheels of history. Just as romantics looked to technocrats to give practical effect to their nostalgic yearning for a return to a golden age of international harmony, technocrats depended on romantics to give emotional resonance to their internationalist projects and to demarcate the group of nations that could participate in these on equal footing.

## Peace Through Justice at The Hague

These dynamics were at work in the grand peace conference that transpired in The Hague nearly fifty years before the Congress of Europe resolved there to endorse the creation of a European human rights system. On May 18, 1899, representatives of twenty-six nations gathered in a small seventeenth-century palace in a forest on the city outskirts. In the comfort of this House in the Wood (*Huis ten Bosch*), diplomats, legal advisors, and military experts conferred in an unusually congenial atmosphere, often engaging in informal parlays over the sumptuous meals offered by their Dutch hosts.[2] The previous year, Tsar Nicholas II had entreated governments to address the "grave problem" arising from the precipitous increase in "military forces to proportions hitherto unknown." He had called the conference so that they could arrive at a preliminary accord on general disarmament. A binding convention to this effect would constitute a "solemn avowal of the principles of equity and law" and offer the world a blueprint for peace in the coming century.[3]

During that intoxicating summer in The Hague, anything seemed possible. Coffeehouses and public squares swarmed with the self-styled pilgrims of the peace movement—journalists, intellectuals, church leaders, trade unionists, philanthropists, and agitators—who believed that unfettered warfare had no place in a civilized world. Their names could be found on the membership rolls of the International Arbitration League, the Inter-Parliamentary Union, the Permanent International Peace Bureau, the Universal Peace Congress, and other peace associations that had proliferated throughout the last

decades of the nineteenth century. They envisioned the conference as more than a routine meeting between foreign dignitaries. The tsar had offered his patronage to the peace movement, and he barely blushed when many of its members described him in messianic terms.[4] William Stead, the pioneer of crusading journalism in Britain, organized a Peace Crusade on behalf of Nicholas II's proposal, pronouncing the tsar a saintly figure and calling for a "Great Pilgrimage of Peace" from San Francisco to St. Petersburg. "I feel as if I were a herald angel," he remarked.[5] Such millenarianism contrasted sharply with the sober, technical language that had become de rigueur among international lawyers, who were dutifully accorded the status of "scientific delegates" at the conference.[6]

The Hague was the site of much discussion on the possibility of the creation of an international organization of states. Some at the peace conference thought they were witnessing the birth of a "Parliament of Man" and the coming of a world confederation founded on the enlightened principles of international law.[7] Stead himself was of the opinion that an international court of justice whose rulings would be backed by military sanctions should form the nucleus of a world federation or "United States of Europe," a term often invoked in nineteenth-century internationalist and pacifist circles.[8] Though his rhetoric tended toward romantic sentimentalism, he was well aware of the material conditions and technical expertise necessary for this dream to become a reality. Crisscrossing Europe by rail, he observed that "for travelling purposes Europe is already a commonwealth."[9]

The initial wave of sanguine pronouncements accompanying the first weeks of the conference receded as negotiations over a disarmament convention stalled. Dutch hospitality had not been enough to suppress those national rivalries, suspicions, and resentments that were, and would remain, part of the fabric of international life. Delegates directed their antagonism at the organizers of the conference, which many increasingly suspected of advancing Russian interests. They distrusted the lofty language of the tsar and those "political riff-raff . . . openly working under Russian protection," in the words of one German delegate.[10]

And with good reason. Nicholas's defense of the "solemn principles of equity and law" had reflected, in part, his concern over Russia's vulnerable position in the Far East. The last years of the 1890s had witnessed a scramble by Europeans and Japanese to take control of strategic parts of Chinese territory. Britain and the United States, the champions of global free trade, had proclaimed their opposition to the creation of separate spheres of influence in China. Anglo-Russian relations had deteriorated rapidly after Russia announced arrangements to lease Port Arthur from the Chinese government. There were rumors that Britain had been seeking alliances with other Great Powers for a military offensive against Russia. The relatively paltry financial resources of the Russian government would make an arms race with Britain

unsustainable. Those delegates in the House in the Wood who were aware of these strategic considerations would not have been surprised that Nicholas was eager to mold himself in the image of Alexander III, the "Tsar Peacemaker," courting British peace activists and positioning Russia as a beacon of civilized discourse between nations.[11]

Delegates did not come to The Hague in their personal capacity but as representatives of those governments that had listened to the tsar's appeal.[12] Nicholas had taken pains to ensure that the conference would not be limited to Western states. Ottoman, Persian, Chinese, Japanese, and Siamese emissaries sat side by side with the Europeans. Though the Great Powers deigned to share the House in the Wood with some unfamiliar company, they were still its unquestioned gatekeepers. No move could be taken at the conference without their unanimous assent. Russia insisted that Bulgaria should have a seat at the table, even though it was a dependency of the Ottoman Empire.[13] Britain blocked the participation of the Boer republics. Italy and Germany succeeded in barring representatives of the Vatican from the conference, calling into question the international standing of the Holy See.[14]

Just as *Realpolitik* had played a role in the origins and composition of the conference, so it threatened to bring the talks there to a standstill. The failure to conclude an accord on disarmament, due primarily to suspicions that such a treaty would serve the strategic interests of rival states, was a bitter blow to peace activists. Then unexpectedly, in the midst of this impasse, Julian Pauncefote, the head of the British delegation, put forward a proposal that rekindled the enthusiasm of the peace lobby. To the great surprise of the other delegations, Pauncefote suggested the establishment of the first international arbitral court. After a moment of stunned silence—"you could hear a pin drop," according to one observer—a groundswell of support emerged for the British proposal.[15]

Arbitration had been a cause célèbre of the peace movement for over fifty years, and Pauncefote's plan was based on a similar one endorsed by the Inter-Parliamentary Union.[16] In 1897, as British ambassador to the United States, Pauncefote had negotiated the first diplomatic accord that recognized the principle of binding arbitration. Then, the rude realities of democratic politics intervened, and the US Senate rejected the treaty.[17] Most of the national delegations at The Hague, by contrast, were well disposed to be party to an arbitral court whose judgments would be nonbinding, offering the possibility that the conference would produce a major convention without requiring their governments to commit to more stringent measures.

When the conference concluded on July 29, the delegates issued a Final Act—later known as the First Hague Convention—incorporating the various conventions, declarations, and resolutions over the past ten weeks. Absent were provisions on the reduction of armaments, the reason for meeting in the first place. Nonetheless, there were two conventions on the customs of land

and naval warfare. These included criteria for a state of belligerency between nations and the status of noncombatants. The Final Act also contained declarations prohibiting inhumane weaponry, such as asphyxiating gas and dumdum bullets, for five years.

Another component of the Final Act adopted at the 1899 Hague peace conference was the Convention for the Pacific Settlement of International Disputes, which established the Permanent Court of Arbitration first proposed by the British delegation. This entity was, in fact, not a permanent court at all. Rather, it was an administrative organ that established ad hoc tribunals, along with a body of guidelines, to facilitate reconciliation between two states after diplomacy had failed. Although the members of the Permanent Court of Arbitration were called judges, they were no more than provisional arbiters without power to issue binding judgments on states. The statute of the Permanent Court of Arbitration made clear that states would retain their sovereign prerogatives.[18]

The nascent Hague court began its operations. It could boast of some initial successes, resolving a dispute between the United States and Mexico, and then facilitating the peaceful resolution of the blockade of Venezuela by Britain, Germany, and Italy.[19] Not all were so tractable. In 1904, the Russians and Japanese refused the services of the court when tensions flared again in the Far East. Like the British before them, the Japanese were vexed by Russian encroachments into Manchuria. In contrast to the Anglo-Russian standoff, there now existed an international mechanism designed to prevent an outbreak of hostilities. Yet neither Russia nor Japan availed themselves of the Permanent Court of Arbitration. The Russo-Japanese War that erupted in February 1904 was brought to a close in September 1905 through the mediation of a new providential shepherd of peace, US President Theodore Roosevelt. Though known for his bellicosity, Roosevelt waltzed into the peace movement's pantheon of heroes and was awarded the Nobel Peace Prize in 1906.

From June to October 1907, The Hague hosted a second peace conference in the thirteenth-century Hall of Knights (*Ridderzaal*). This time, forty-four states participated, including a sizable and vocal Latin American contingent. Roosevelt had been the first to call the conference but had been gracious enough to give Nicholas II the honor of officially convening it. The US president placed great priority on making improvements to the Permanent Court of Arbitration. Writing in April to Andrew Carnegie, the aging Scottish-American steel magnate and philanthropist, Roosevelt revealed that he considered the conclusion of a general arbitration treaty to be the most important objective of The Hague. This treaty was linked to the Hague court with a bench of permanent, salaried judges who would possess the same authority over states that US courts had over individuals in their jurisdiction. US delegates had accordingly proposed a scheme for an Arbitral Court of Justice.

The choice of the word "justice" implied that the court would have jurisdiction over all matters relating to international law.[20]

US Secretary of State Elihu Root was convinced that the other delegations would accept the American proposal if only they could be certain of the impartiality of judges. Indeed, the plan was generally well received among the Great Powers. Smaller powers, however, particularly the Latin American countries, objected to the procedure for nominating judges. The Mexican delegation refused, in its words, to "acquiesce to any convention in which all the states called to the Peace Conference are not considered on the basis of the most absolute and perfect equality."[21] As a result of such determined opposition, Root's scheme suffered an unexpected defeat. The 1907 conference adopted binding treaties—now known as the Second Hague Convention—on the status of neutrals and enemy merchant ships during wartime, as well as restrictions on naval bombardment and the use of underwater mines. Delegates also issued a nonbinding resolution in favor of the principle of compulsory arbitration and concluded a convention on the establishment of an international prize court. But they could not produce a binding accord on an international court of justice.

## The Decline of Universal Law

Though the Hague peace conferences had not achieved their intended objectives, it would be uncharitable to label them a failure. Without a doubt, the Hague Conventions marked a notable step forward in the evolution of international law.[22] Laws of war had been common to societies across the globe in ancient times, but before the mid-nineteenth century they had remained largely uncodified. During the Middle Ages emerged a Christian doctrine of just war that set out the terms by which Christians could rightly take up arms against one another, while chivalry and church teachings came to govern the conduct of armies in war. Wars were justified on the principle of military necessity—for example, in the case of self-defense—while it was held sinful to use weaponry such as crossbows against fellow Christians. By the early seventeenth century, a number of European jurists had published widely circulated rulebooks on the laws of war. Notwithstanding such fine sentiments, these rules were routinely ignored within Europe and without, just as they continue to be to this day. Even most of those who took the laws of war seriously considered them not to apply in their entirety in the case of civil wars and rebellions or crusades against heathens and heretics.

The laws of war, along with other rules concerning the treatment of foreigners and relations with them, came to be known as the law of nations (*ius gentium*), also known as the law of peoples. This term harkened back to an ancient Roman conception of a corpus of law common not to a

particular society but to all (or almost all) peoples. In ancient times, the law of nations had regulated interactions between Roman citizens and noncitizens. So, too, in medieval Europe, was it conceived as a set of norms that structured relations between persons rather than impersonal entities such as states. For medieval scholars, the law of nations was derivative of the law of nature, which was superior to human-made laws. Though the former reflected a broad consensus among peoples based on shared codes of conduct, it was not global in its scope. By contrast, natural law applied without exception, for its precepts were not dependent on human acts and customs but rather reflected the God-given natural order of the universe. On the other hand, natural law was secular in that it could be rationally ascertained on the basis of transcendental nonreligious truths, including those postulated in classical philosophy, without reference to biblical passages, as one did when expounding on divine law.

Though natural law was a uniquely European phenomenon, it was widely considered applicable to all humans regardless of their culture and faith. As Pope Innocent IV declared in 1243, even infidels were held under natural law to be entitled to the ownership of property and sovereignty over lands under their rule, the Holy Land excepted. Later, theologians argued on the basis of natural law that the indigenous peoples of the Americas could not be stripped of their possessions or enslaved simply by virtue of being pagans, a principle upheld in Pope Paul III's bull *Sublimis Deus* (1537). This is not to say that there was a uniform approach to these questions either in theory or practice, especially in so far as dealings between Europeans and non-Europeans were concerned. Papal proclamations were necessary precisely because of the unceasing scholarly controversy on these matters. The most heated disagreements were those between Aristotelians and Thomists. For Aristotle, the natural order dictated that Greeks had different obligations to fellow Greeks than they did to non-Greeks, that is, "barbarians." For Aquinas, it was evident through the light of one's reason that nature dictated certain acts impermissible against fellow humans, regardless of their customs or whether these acts were explicitly prohibited in holy texts.

The advent of the modern era witnessed the gradual disaggregation of the law of nations from natural law. This development followed in the wake of the Reformation, which splintered the Western Christian world and the universalism of medieval natural law with it. Protestants, believing that human beings were rational creatures able to achieve their own salvation, made free will and freedom of conscience central to their doctrine. At the same time, the wars of religion spurred persons of all faiths to find a basis for stability and political legitimacy that would not be contingent on embracing any one Christian faith. The universalist ethical foundations of the law of nations had begun to crack.

Hugo Grotius, a Dutch Protestant jurist, argued in *On the Law of War and Peace* (1625) that states could in collaboration lawfully adapt their practices of warfare to "the demands of usage and human needs." Alongside natural law arose a "voluntary (or volitional) law of nations" anchored in "custom and tacit consent."[23] In this fashion, common ground might be found between Catholics and Protestants. On the same basis, Grotius held that the enslavement of conquered peoples was in some cases justified but never for those who did not subscribe to that practice. When it came to his views on the rules of warfare against the indigenous peoples of the Americas, he justified their exclusion from the ambit of international norms by denying them full membership in the human community on account of their purportedly bestial ways.

More troubling for Grotius and his contemporaries was the bloody conflict within Christendom. The 1648 Peace of Westphalia brought relief from the wars of religion, concluding the Thirty Years' War that had wracked the Holy Roman Empire. It marked an end to the notion that the pope or Holy Roman emperor had the prerogative to dictate to monarchs and princes how they should rule over their subjects. In medieval times, popes had claimed universal jurisdiction over all matters pertaining to violations of divine and natural law. In theory, papal prerogatives had included the right to intervene in secular affairs in order to prevent and punish sinful behavior. Some went as far as to argue that papal authority was superior to all secular authority, invoking this doctrine to depose rulers or incite rebellion. In other cases, popes served as mediators in cases when disputes arose between states.

Juridical visions of the international order underwent a dramatic transformation in the nineteenth century at the hands of legal positivists who outright rejected natural law as a basis for regulating relations between states. They conceived of "international law," to use an expression that gained currency at the time, as the application of new scientific methods to global norms, which in turn were the product of collective human will and the existing practices of states rather than universal morality and reason. According to the positivist school, international law described what *was* rather than what *should* be. Science, not morality, was its polestar. The task of international lawyers was to serve the interests of states and safeguard their freedom of maneuver. War was an inevitable facet of international relations that had to be managed through contractual arrangements between states regarding the terms by which it would be waged. States could legitimately instigate war not only out of self-preservation but also to realize economic and political objectives. As freestanding entities, the choice of whether to engage in hostilities was theirs and theirs alone. Yet as part of an increasingly interconnected world, resulting in no small part from the emergence of global commercial and financial networks, it was understood to be in their mutual interest to respect their obligations to one another. In the same manner as the invisible hand of the market, the dynamics of this

seemingly anarchic international system would result in the greatest freedom and prosperity for all.

The decline of the status of natural law in the international legal field transpired at the same time as humanitarianism was becoming a defining feature of international life. From a biological perspective, nineteenth-century humanitarian ethics were even more starkly universalist than those of medieval natural law, for humanitarians believed that all creatures, human or no, were equally deserving of one's care. While medieval Christian teachings held that suffering was an unavoidable part of the human condition and could be redemptive, humanitarians campaigned for suffering in all its forms to be eradicated. The humanitarian impulse was rooted in sentiment as well as reason. It was an act of imagination that expanded the horizons of one's compassion beyond one's neighbors to the denizens of slums and peoples in far-off lands, one that generated fellow feeling for beings whose appearance, manners, and speech were nothing like one's own. This sympathy was understood to flow naturally from an innate human response to witnessing suffering either in person or through its representation in images and narratives. Whereas to feel sympathy and act on it was to realize one's own humanity, to be indifferent or fail to intervene when another member of the human family was in need was akin to abandoning one's own child.

On the other hand, universal humanitarian concern did not translate into a belief that all humans should enjoy equal political rights. Nor did it require that humanitarians believe the recipients of their aid to be their equals. Yes, the humanitarian insisted, slaves should be emancipated, the hungry fed, the indigent clothed, laborers afforded proper working conditions, the uneducated taught to read. But no, this did not mean that blacks, the poor, and the illiterate should necessarily be entitled to, for example, determine the government of the territories on which they resided. The point was to spur action on the part of humanitarians, who cast their cause as above politics, not to mobilize those receiving the humanitarian assistance to enter into the political arena. It was the very helplessness of these creatures that had compelled humanitarian action in the first place.[24]

Humanitarians were often motivated by a strong religious faith, but new secular doctrines played a role too, such as the utilitarian imperative to maximize collective well-being. Broader social and technological forces were at work as well. The rise of novels and the popular press, as well as inventions such as photography and the telegraph, permitted portraits of suffering to reach a wide audience. In an age of advancing democratization and mass literacy, public opinion now began to exert its influence in domestic and international politics. These factors fueled the successful humanitarian campaign to provide assistance to sick and wounded soldiers on the battlefields of Europe through the creation of the Red Cross.[25] This non-governmental organization took the side of no one and everyone, for under the 1864 Geneva Convention, the Red Cross was to

have neutral status, serving the needs of humanity alone. The adoption of the Geneva Convention marked at once a victory for internationalist civil society and a sober recognition that better results were achieved trying to tame war than abolishing it altogether.[26]

Parallel to the ascendancy of an avowedly amoral science of international law in the juridical sphere was the emergence of a distinctly anti-humanitarian strain of thinking in the social and physical sciences. In the field of British biological anthropology, Herbert Spencer and Robert Knox invoked Charles Darwin's theory of natural selection to justify in scientific terms the inherent inferiority and eventual extinction of non-European races. Whereas liberal imperialists such as John Stuart Mill believed that progress could be achieved through the collaboration of the more and less advanced peoples of the world, Social Darwinists posited that progress was a product of the struggle between lower and higher forms of life. Hence, the perishing of an inferior race could be considered an ineluctable step toward the perfecting of humanity. In *The Descent of Man* (1871), Darwin himself hypothesized that Africans were intermediate forms of life between primates and civilized man destined to die out. "At some future period, not very distant as measured in centuries," he predicted, "the civilized races of man will almost certainly exterminate, and replace, the savage races throughout the world."[27] If the Darwinian principle of "survival of the fittest" was rigorously applied to the human species, then moral considerations might no longer apply at all to colonial rule. Though the word "genocide" was not yet part of Europeans' vocabulary, the concept certainly was.

## The Society of Civilized States

What, then, did it mean to be civilized at the Hague peace conferences? The nebulous phraseology employed by delegates in the House in the Wood is illuminating in this regard. The official transcripts of the 1899 conference contain references to the "civilized countries," "civilized nations," "civilized states," and the "civilized world," but not one mention of "civilized Europe," "European civilization," or "Christian civilization." Instead, delegates used such phrases as "world-wide civilization" and "civilized humanity."[28] The only mention of Christianity to be found in the official record was Pope Leo XIII's missive to the Dutch monarch, Queen Wilhelmina, in which the pontiff spoke of "serving the sacred cause of Christian civilization."[29] There was even discussion of changing the insignia of the Red Cross because its symbolism was insufficiently ecumenical.[30]

The national origins of the delegations to The Hague reflected the ambiguous cultural fault lines of fin-de-siècle international law. The disputes over Chinese territorial integrity that preceded the 1899 conference highlighted just how ill-defined the rights and obligations accorded to non-Western

peoples were. Many nineteenth-century international lawyers, influenced by the latest writings on biological and social evolution, posited that only so-called advanced nations were entitled to sovereign status. Assigning a society a place on the ladder of civilization was generally done on the basis of its level of culture—that is, European culture—but this was not a satisfactory model for most. Ever more determined to view their discipline as a strictly scientific endeavor, they struggled to agree on objective criteria for membership in the community of states that enjoyed full equality under international law.[31] There was little consensus regarding the geographical frontiers of Europe and even less regarding the boundaries of European civilization as a whole. In practice, as in earlier times, standards for sovereign status continued to be determined by conventional wisdom and cultural sensibility rather than science.[32]

As for how such civilizational criteria applied to overseas empires, the unresolved status of colonial territories under international law had bedeviled international lawyers ever since the failure of the 1884–1885 Berlin Conference to agree on clear rules for recognizing territorial sovereignty during the "scramble" for Africa.[33] This legal lacuna had at times aggravated tensions between rival imperial powers, witnessed in the competing claims that France and Britain issued during the 1898–1899 Fashoda affair.[34] The ambiguous status accorded to colonies under international law also allowed imperial powers to skirt the Hague Conventions. Britain used such legerdemain during the 1899–1902 Boer War when it absorbed the two independent Boer republics into its empire and engaged in brutal acts of repression against Boer settlers under the cover of martial law. British troops employed scorched earth tactics, burning fields and destroying livestock, herding settlers into what came to be known as concentration camps, where more than 20,000 Boers died.[35]

To many back in Britain, this appeared to contravene the humanitarian basis on which their overseas empire had long been justified. The ostensible aim of British imperialism, after all, had been to bestow the gifts of civilization to barbarians and savages, not join them in their barbarism and savagery. This is how Mill articulated the civilizing mission in *Considerations on Representative Government* (1861). In its pages, the British liberal philosopher argued on utilitarian principles that European colonial rule was justified in order to instill in the colonized a capacity for self-government. Without the guidance of Europeans, native peoples would not possess the requisite qualities of initiative and self-restraint, instead remaining mired in their purportedly indolent and savage ways. Indians, for example, were best administered through a "vigorous despotism" that "facilitates their transition to a higher stage of improvement."[36] Each British territory found itself on a different rung of the civilizational ladder, with white settler colonies at the top and those populated exclusively by dark-skinned peoples at the bottom. Mill's liberalism was no impediment to his imperialism. On the contrary, the

defense of liberal principles became part and parcel of British imperial rule, just as the defense of the rights of man subsequently legitimized the overseas imperialist ventures of French republican governments. Not only did this rhetoric provide cover for colonial repression and violence—even more perversely, invocations of liberty and rights could in colonial contexts be twisted so as to justify their most egregious violation.[37]

In the nineteenth century, natural law was not done away with in the international legal field; it merely went underground. Dissenting jurists clinging to the rationalism of the Enlightenment held that under the principles of natural law the colonized possessed certain basic rights that entitled them to a minimum of humane treatment on the part of colonizers, though this did not necessarily mean that they were prepared to formally codify these rights in treaty law. There was also a contingent of liberal international lawyers who were avid critics of imperialism and argued that even "savage small tribes," in the words of the French jurist Charles Salomon, possessed sovereignty.[38]

Delegates to the first Hague peace conference were divided on those very questions. During a debate on the use of dumdum bullets, the British delegate Sir John Ardagh unsuccessfully demanded that an exception be made in the case of native peoples. "In civilized war a soldier penetrated by a small projectile is wounded, withdraws to the ambulance, and does not advance any further," he explained. "It is very different with a savage. Even though pierced two or three times, he does not cease to march forward, does not call upon the hospital attendants, but continues on, and before anyone has time to explain to him that he is flagrantly violating the decisions of the Hague Conference, he cuts off your head."[39] The Russian delegate Arthur Germanovich Raffalovich retorted that Ardagh's remark was "contrary to the humanitarian spirit which dominates this end of the nineteenth century. It is impermissible to make a distinction between a savage and a civilized enemy; both are men who deserve the same treatment."[40]

This dispute must be set against the backdrop of a long history of unrestrained British warfare against peoples they considered to be uncivilized, from the Irish and American Indians in the seventeenth century to Africans and Asians in the nineteenth. During the 1879 Anglo-Zulu War, for example, in retaliation for a Zulu attack on a British column in which no quarter was given, the British army massacred tenfold the number of wounded Zulus. According to journalists on the scene, British officers, already not inclined to take Zulu prisoners, became consumed with "a desire for extermination" in their thirst for revenge.[41] One of them, Charles Norris-Newman, observed that "the fallacy of fighting with an uncivilized race with the same feelings of humanity that dictate our wars with civilized races was thoroughly proved; and it thus was shown that in the Zululand neither men, kraals, cattle, nor crops should be spared on any pretence whatever, except on the complete submission and disarmament of the whole nation."[42]

The British were by no means alone in expressing such sentiments, nor were they the worst offenders. One need only consider the brutalization and mass murder of Africans in the Congo Free State, a personal fiefdom of King Leopold II of Belgium, which perversely took place under the cover of humanitarianism.[43] The Belgian case was the backdrop for Joseph Conrad's novel *Heart of Darkness* (1902), in which the author described the harrowing effects of imperialism on the colonizer and colonized alike. The most sinister figure in his tale was the colonial administrator Kurz, a member of the (fictional) International Society for the Suppression of Savage Customs whose own terrifying savagery was indelibly captured in the image of severed African heads posted around his camp. Having succumbed to madness in the jungle, this erstwhile humanitarian—described by one character as an "emissary of pity, and science, and progress, and devil knows what else"—expires crying, "Exterminate the brutes!"[44] What others had described as the spread of civilization was to Conrad nothing short of a reversion to barbarism, an unleashing of the primordial irrational impulses that were the subject of so much scientific interest at the time. If Africa was one heart of darkness, the human psyche was another.

So, too, was darkness clouding the horizons of Europe. As Marlow, the narrator of *Heart of Darkness*, observes wryly, Kurz "would have been a splendid leader of an extreme party," and his "proper sphere ought to have been politics 'on the popular side.'"[45] The extension of suffrage to the lower middle and working classes had indeed come at a price. A populist strain of militant nationalism, often coupled with a virulent anti-Semitism and talk of a looming race war, had burst onto the European political scene, drawing support from many in these newly enfranchised groups. Many members of the conservative elite, apprehensive that mass democracy might sweep the hated Left into power, saw this development as a godsend. Others looked on with disgust and trepidation, while still more resigned themselves to making a deal with the devil so as to vanquish what they viewed as an even more formidable foe, socialism. It was apparent to conservatives that European parliamentary politics were as in need of the wise restraints of civilization as the colonies. Yet at the cusp of the age of total war, European elites did not come together in concert to repress the forces of right-wing nationalism, as they had done with left-wing nationalism not long before.

More recently, such provisions in treaty law had limited their territorial application to newly formed states and colonies. The 1878 Treaty of Berlin, which guaranteed religious toleration in former and current territories of the Ottoman Empire, barred any infringement of religious minorities' "enjoyment of civil and political rights." So, too, were guarantees of religious liberties in African territories included in the General Act to issue from the 1884–1885 Berlin Conference. In signing the Hague Conventions, the Great Powers were now limiting their own freedom of action within Europe—and

not just with regard to foreign diplomats and merchants, as was common practice. This practice was not unprecedented, but it had fallen into disuse. The Hague Conventions differed substantially from minority rights treaties in that they were intended to protect foreign subjects, not one's own, and applied only in times of war.

Though the phrase "human rights" was nowhere to be found in the Hague Conventions and their provisions only applied to their signatories, it was ambiguous whether they were based on universal principles of justice. The 1899 Convention with Respect to Laws and Customs of War on Land cited the "laws of humanity" as one basis for "the principles of international law." Yet as suggested in its reference to the "usages established between civilized nations," the Hague Conventions were premised on the assumption that there existed a set of ethical practices exclusive to a particular group of peoples rather than humanity as a whole. The full clause in the Hague Conventions—subsequently known as the Martens Clause for its architect, the esteemed Russian jurist Fyodor Fyodorovich Martens—read, "Until a more complete code of the laws of war is issued, the High Contracting Parties think it right to declare that in cases not included in the Regulations adopted by them, populations and belligerents remain under the protection and empire of the principles of international law, as they result from the usages established between civilized nations, from the laws of humanity and the requirements of the public conscience."

This intentionally ambiguous language was intended to ensure that the Hague Conventions could not be interpreted as negating other international rights safeguards that might apply in times of war, even if they had been left uncodified. The Hague Convention did not clarify which rights and obligations these "laws of humanity" entailed and on what basis they were justified—for good reason, given the diverging views on these subjects. Martens's intended meaning can be gleaned from an 1883 treatise in which he enumerated a number of fundamental liberties that were not contingent on positive law: "the right to respect for [the] person, to inviolability of . . . family and of . . . property." "The rights," he insisted, "flow from the nature and conditions of humanity and therefore cannot be created by legislation. They exist by themselves."[46]

In addition to imposing a raft of new obligations on states to one another, the Hague Conventions safeguarded the fundamental freedoms of individuals as well. States party to them were bound by its terms to respect the liberties of combatants and noncombatants alike, enshrining their freedom of religion, property rights, and rights to a fair trial in international law. This was not the first time that an international accord had safeguarded these rights. In 1648, the Peace of Osnabrück, one of the treaties that constituted the Westphalian settlement, guaranteed "liberty of conscience" and the "public exercise of their religion," in addition to a number of other "privileges and rights," which

were predominantly in the economic, social, and cultural sphere. During the seventeenth and eighteenth centuries, Western and Central European states had adhered to a number of treaties regulating their treatment of Catholic or Protestant minorities on their territory.[47]

This did not, however, mean overturning the principle of state sovereignty. Martens had been instrumental in securing the passage of the arbitral convention by inserting a key clause allaying fears that the court might impinge on the sovereign prerogatives of states. He had also been the first to propose the establishment of international commissions of inquiry, proving to be deft at fashioning a compromise by limiting their purview. The commissions would only be allowed to investigate disputes "arising from difference of opinion on points of fact," but "involving neither honor nor vital interest."[48]

In practice, therefore, the Hague Conventions constituted an agreement between "civilized nations" alone, one, moreover, that established no effective supranational controls on their behavior. States party to the Hague Conventions formed an exclusive club of kindred peoples. All members of the "society of civilized nations" possessed, in theory, equal sovereign rights and concomitant duties to abide by their treaty commitments toward one another. They did not undertake any explicit corresponding obligation under the Hague Conventions to respect the rights of all peoples in wartime, only those whose representatives had been invited to the Hague peace conferences.

There are those today who hold that, given the endurance of this civilizational hierarchy, it is wrong to describe the Hague Conventions as human rights texts or to speak of human rights as a structuring principle of the international system before the 1940s.[49] A number of mid-twentieth-century conservatives, however, would subsequently see the fin-de-siècle moment in a different light, viewing it as a period of transition from an international order rooted in the particular features of European societies to one anchored in an abstract universalism without meaningful cultural and ethical content. One of these was the German jurist Carl Schmitt, a fierce critic of those who looked to either rationalism or positivism for answers to the problems besetting the international relations system. He found himself ill at ease with both drab technocrats who worshiped at the altar of scientific expertise and feckless romantics who, in his words, "preferred the state of eternal becoming and possibilities that are never consummated to the confines of concrete reality."[50] Schmitt himself might be best described as a nostalgic realist, one whose detestation of liberal cosmopolitanism (read: world Jewry) and admiration for men of action led him to become a leading academic apologist of the Hitler regime following the Nazi seizure of power.

In *Nomos of the Earth in the International Law of the Jus Publicum Europaeum* (1950), Schmitt held that, until the 1890s, "the predominant view was that the concept of *the* international law was a specific *European* international

law." "This also was true," he noted, "of such world-wide, universalist concepts as *humanity, civilization*, and *progress*, which determined the general concepts of the theory and vocabulary of diplomats. However, the whole picture thereby was understood to be Eurocentric to the core, since by 'humanity' one understood, above all, *European* humanity. 'Civilization' was self-evidently only *European* civilization, and 'progress' was the linear development of *European* civilization."[51] With the ascendancy of the United States as a global economic superpower, Schmitt noted, a new secular spatial and temporal order emerged, one whose nexus was no longer the *respublica Christiana*, as medieval European Christendom was known. As a result, the international system commenced its "dissolution into a general universality," one in which the organic ties that had once bound together the peoples of Christian Europe were "replaced by an empty normativism of allegedly recognized rules."[52]

In fact, an understanding of the international order anchored in the *respublica Christiana* persisted from the end of the nineteenth century well into the twentieth century among those conservative Europeanists who founded the European human rights system that emerged in the aftermath of the Second World War. Nothing could have been more different from their vision than the cosmopolitan legal positivist's view of a world civilization in which science and sovereignty trumped morality as the basis of international law. Even so, there were striking similarities between the human rights campaign of the postwar European unity movements and the crusade of fin-de-siècle internationalists for "peace through law" and "peace through justice." Both looked past the fractured Europe of the present to an imagined cultural and ethical unity of ages past, one anchored in Europe's Christian heritage. It is these continuities that we must bear in mind when narrating the history of international law in all its romance and all its brutal irony.

## Romantic Internationalism and the Hague Peace Palace

But we are getting ahead of ourselves. If we confine our vision of international law to the utterances of international lawyers, then the fin-de-siècle moment is one dominated by a new professional class with scientific pretensions who shucked the old Christian trappings of international law for an amoral worldview in which Europe's past had no purchase on the present. Restricting the history of international law in late modern Europe to the history of international lawyers risks overlooking how, among the rest of the population, the ethical foundations of international law remained stubbornly oriented toward a premodern past. Reintegrating the history of international law into the cultural history of internationalism offers a more holistic perspective, one

that (quite literally) paints a different portrait of European understandings of international norms.

The interplay between the technocratic and romantic dimensions of fin-de-siècle internationalism was evident in the Peace Palace (*Vredespaleis*) of The Hague, which today is the seat of two international courts—the Permanent Court of Arbitration and the International Court of Justice—in addition to an academy and library of international law.[53] Though the story of the construction of the Peace Palace has been told before, it is worth revisiting with an eye to the elements of fin-de-siècle internationalist memory that later gave rise to the European human rights system. The following is a guided tour through not only the twists and turns that led to the creation of this historical artifact but also the visual representations of the internationalist ideals that it was meant to embody.

The origins of the Peace Palace could be traced to the heady summer of 1899, when Martens conceived of a magisterial structure to house the Permanent Court of Arbitration and host future peace conferences at The Hague.[54] Martens first relayed his courthouse plan to Stead, who suggested that Carnegie might be interested in the project, as the industrialist had recently spoken to him of how best to use his vast fortune for the cause of world peace. Eventually, Carnegie proved receptive to the idea, announcing in April 1903 that he would give 1.5 million dollars for the building of a grand edifice that would house both a courthouse and a great library of international law[55]—"About the price of an armored cruiser," an American journalist observed.[56] Over the past decade, Carnegie Steel Company had supplied the US Navy with armor plate for such vessels at a hefty profit.[57]

The opening of the second Hague peace conference coincided with a ceremony for the laying of the foundation of the Peace Palace. Chiseled into the cornerstone was a Latin inscription: "To Peace. By the Munificence of Andrew Carnegie this Temple is Dedicated to the Furtherance of Justice."[58] Count Nelidoff, a Russian delegate and president of the second Hague peace conference, proclaimed his desire to have the "cult of peace" spread far and wide across the world.[59] Former Dutch foreign minister Mynheer de Marees Van Swinderen thanked Carnegie for his benefaction "in the name of civilized Europe."[60]

Civilized Europe would have to wait some time, however, to see any further results. Interminable wrangling ensued over the question of where the Peace Palace was to be built, after which construction work proceeded at a snail's pace. For six years following the laying of the cornerstone, visitors to the site could see nothing except the words "No Admittance."[61] The Peace Palace languished, cocooned in scaffolding, while the Permanent Court of Arbitration continued to do business in a crumbling aristocratic residence on the *Prinsengracht*, a quarter of the city threatened with being overrun by the popular classes.[62]

This was undoubtedly not a state of affairs congenial to the elite circles in which fin-de-siècle diplomats and international lawyers circulated. Martens, for one, did not shy away from expressing his class prejudices. Upon hearing that the Peace Palace might be erected on a piece of barren swampland, the Russian jurist objected that this was no site for an "edifice, under the roof of which a refuge will have been found for the noblest aspirations of the peoples of intellect and for the good of the entire world."[63] In effect, the Peace Palace embodied the particular values of a narrow social group—his own—on whose foundations rested its universal mission, one aimed at saving humanity from itself.

As for Carnegie, the mogul insisted that the chamber in which judges of the Permanent Court of Arbitration deliberated have small dimensions so as to remove any temptation to tailor their utterances to a mass public. Close quarters, he explained to the board of the Carnegie Foundation, "dampens excited oratorical discussion," adding, "Nor would it be favorable to success that a large audience should be present."[64] Influenced by the social Darwinism of the British philosopher Herbert Spencer, Carnegie was convinced that social inequality was an inevitable outcome of industrialization, a system that favored those talented, hardworking, entrepreneurial individuals who were the engines of progress.[65] According to his "gospel of wealth," philanthropy rather than state intervention was the remedy. Carnegie's bequests spanned the globe, funding transnational networks of technical experts from New York to The Hague to Sydney and beyond.[66]

If Carnegie devoted much of his riches to the development of global technocracy, his internationalism was not without a romantic side. In his memoirs, Carnegie described the Peace Palace as "the most holy building in the world because it has the holiest end in view," boasting, "I do not even except St. Peter's."[67] He did not extend such accolades, however, to its architectural design. Having originally envisioned a neoclassical "Temple of Peace" modeled on the Parthenon, Carnegie was outraged to see the project's Dutch engineer, as construction proceeded, encrust his ancient sanctuary in red brick, adorn it with dormer windows, cover it with a high-pitched roof, and cap it with a fleche. By the time of the opening ceremonies, the Peace Palace exterior resembled that of the medieval guildhalls in The Hague or French Flanders, where the architect Marie Louis Cordonnier was born.[68]

Perhaps the lesson here was that the local conditioned the international—that is, internationalist projects, despite their universalist pretensions, could never be severed from the cultural particularities of the places in which they were born and operated. But there was also a political dimension to this architectural genre. Cordonnier was part of a neoromantic school of architects that sought to faithfully recreate styles of architecture that had been distinctive to particular French regions before the consolidation of the nation-state.[69] This was part of a broader regionalist movement that aimed at reviving and

reinforcing local identities threatened with extinction by efforts to impose a singular national consciousness throughout the territory of France. Although in party politics during the Third Republic, regionalism was often associated with Catholic conservatism, it appealed to certain renegade elements of the Center and Left as well. What united its adherents, whose affiliations ranged from royalism to socialism, was an opposition to the Jacobin centralism born of the French Revolution in favor of greater federalism.[70]

What any of this had to do with the internationalist spirit of the Peace Palace project was not evident to many of Cordonnier's contemporaries. This bewilderment was to some extent uncalled for, as there were French regionalists interested in the question of international organizations, believing that their brand of federalism, which deemphasized the nation-state in favor of social relationships at the subnational level, could be applied to international relations as well. According to the French politician Jean Hennessy, founder of the League for Professional Representation and Regionalist Action, regionalism was not only a "principle of social organization" but also a "system for going beyond sovereignties."[71] Even so, the Carnegie Foundation's awarding of the commission to Cordonnier had solicited great protest from architects around the world and become the subject of heated debate within the Dutch parliament. Contestants and observers alike were mystified as to why the prize committee had selected a rather banal design by a second-tier architect associated with Gothic revival over more distinguished competitors. The prize committee had passed over a number of prominent Beaux-Arts architects working within the neoclassical frame favored by Carnegie. They did not award first-place honors to the acclaimed Austrian architect Otto Wagner, whose submission, entitled "The Art of the Age," presented a daring vision of the Peace Palace in the avant-garde Vienna Secessionist style for which he was known.[72]

In Vienna, Wagner had pioneered the development of a functionalist mode of architecture in opposition to the historical style on display in the city's Ringstrasse, one that adapted architectural forms to the function that urban buildings assumed in modern life using modern materials such as steel and glass. "New construction, new materials, new human tasks and views called forth a change or reconstitution of existing forms," Wagner wrote in 1895, adding, "Great social changes have always given birth to new styles."[73] Functionalism, according to its exponents, was a truly universal style in that it conformed to the global imperatives of modernity rather than the traditions of any particular time and place. In the commentary accompanying his submission, Wagner averred that his design corresponded to "the novelty of the task in general; the international character of the Institution; the idea of universal well being . . . the influence, not to be neglected in our modern qualities, of constructive technical progress."[74] This statement of aims was well suited to the tastes of technocratic internationalists but not the romantic

internationalist sensibility that ultimately found its expression in the Peace Palace.

The prize committee rejected neoclassicism and functionalism, which were not identified with any one locality, in favor of a regionalist genre that eschewed any pretense of universalism. The rationale given was that the winning scheme was "inspired by the architectural traditions of the Netherlands in the sixteenth century."[75] This only exacerbated the indignation of the Dutch architectural community, who pointed out that a national style from the time of the wars against Spain was hardly compatible with the spirit of intervention and that, in any case, the Frenchman's plans were not in fact a faithful reproduction of Dutch Renaissance architecture.[76]

The Peace Palace was only one of three "temples of peace" whose construction Carnegie financed, one being the Pan American Building and the other the courthouse of the Central American Court of Justice, which was inaugurated in 1908 only to be disbanded a decade later. Though its jurisdiction was limited to only five countries, this judicial body possessed more sweeping powers than the Permanent Court of Arbitration, including the prerogative to adjudicate disputes between a state and a private individual residing on its territory. This proved too much for some participating governments, who accused its judges of playing politics and repudiated its founding charter.[77]

While the Peace Palace crept expensively toward completion, international tensions grew. Two coalitions of Great Powers faced off—a Triple Entente of Britain, France, and Russia versus a Triple Alliance of Austria-Hungary, Germany, and (at least nominally) Italy. War seemed imminent in two armed standoffs over Morocco but was narrowly avoided. Britain, fearing Germany's imperial ambitions and naval power, abandoned its policy of splendid isolation to forge continental alliances. Germany, feeling encircled, supported Austria-Hungary's moves against Russian-backed Slavic populations in the Balkans. European defense expenditures, already high, accelerated with the outbreak of the Balkan Wars in October 1912.[78] Meanwhile, in the Americas, the United States edged toward an armed confrontation with Mexico, as the newly elected US president, Woodrow Wilson, was outraged over the overthrow of the democratically elected government of his Mexican counterpart Francisco Madero and the meddling of European powers in the civil war that followed. When US troops occupied the Mexican port of Veracruz, only the mediation of Argentina, Brazil, and Chile averted a full-scale war.

It was against this backdrop of strife within the "society of civilized nations" that, on August 28, 1913, the Peace Palace opened to great fanfare. A sense of optimism filled the air. The signing of the Treaty of Bucharest eighteen days earlier had almost providentially brought an end to the Balkan Wars. Members of the peace movement and the forty-six national delegations that had participated in the second Hague peace conference attended the ceremonies.[79] The following day, Carnegie unveiled a bust of the British

pacifist Randal Cremer, a founder of the International Arbitration League and seminal influence on his own pacifism. His speech included not only a tribute to Cremer but also a paean to some of his favorite potentates. Referring to Nicholas II's appeal of 1898, Carnegie declared that "history is to proclaim him the first ruler to call civilized nations to abolish barbarous war and enthrone angelic peace."[80] The Russian tsar, however, was no longer able to rally civilized nations around the banner of peace. It was time for another champion to emerge.

"Surveying the world today," Carnegie observed, "the most striking figure to be seen is the German Emperor who recently celebrated his twenty-five years of peaceful reign, his hands unstained with human blood—a unique record. Hence Germany's astounding progress, educationally, industrially, and commercially, proving that the greatest of all national blessings is peace."[81] Carnegie had just paid a visit to Wilhelm II in Berlin to applaud the kaiser for his ostensibly pacific reign, expressing hope that Wilhelm "could rise to his destiny" and join with Theodore Roosevelt in support of an international police force. Although occasionally suspicious of their militaristic tendencies, Carnegie believed that only these two men wielded the military power necessary to buttress the authority of a "League of Peace."[82] Long having advocated a union of "the English-speaking race" into a single federal republic, now he envisioned an undemocratic Germany banding together with the Anglophone democracies.[83] "Why should these Teutonic nations ever quarrel?" he asked his audience.[84] Just as Nicholas II had invited nations to come together for the first Hague peace conference, it was now Wilhelm II's turn to form a "League of Peace" with Britain, Germany, and the United States at the helm. "One small spark often creates the flame. The German Emperor holds in his hand the torch," Carnegie declared. His explosive metaphor was more prescient than he imagined.[85]

On the evening of the unveiling of Cremer's bust, a banquet dinner was given in the Hall of Knights, with officers and dignitaries rising to make elaborate toasts to the health of Carnegie, Queen Wilhelmina of the Netherlands, and other illustrious rulers of the forty-six nations represented at the ceremony. With electric lights now spanning the canals and illuminating the city at night, residents went out on the streets to contribute to the gaiety of the occasion.[86] To his surprise, Carnegie awoke the next day to hear that his appeal to the kaiser had not been well received by many Germans. Nor had there been any response from Wilhelm II himself. German nationalists had gone so far as to accuse Carnegie of slandering their emperor by casting him as a pacifist who would not uphold the honor and rights of the German nation.[87] The torch of peace, it appeared, would not pass through Berlin.

Carnegie concluded his Peace Palace address full of high spirits: "Be of good cheer, soldiers of peace. All goes well in this most holy of crusades.

There can be no such word as 'fail.' "[88] The response of the British press was notably skeptical. "We have no confidence in the capacity of any international court to establish a reign of perpetual peace," *The Times* stated outright. Since relations between states were governed by power and passion, their aggressive impulses could not be regulated by a form of international law that treated international conflicts "as if they were the mere disputes of private persons with claims to property."[89] Official British attitudes could be gleaned from the decision of the British Lord Chancellor, Viscount Haldane, to skip the opening of the Peace Palace in favor of a voyage to New York on the *Lusitania*. Upon being asked his opinion of the ceremonies underway in The Hague, he responded, "It would be a very sanguine person who can see the dawn of international peace. It is useless to look ahead toward the permanent cessation of war in the near future."[90]

The following summer, the assassination of the Austrian heir Archduke Franz Ferdinand catalyzed a chain of events that plunged Europe into its first total war, pitting the Central Powers—led by Austria-Hungary and Germany—against the Allies—led by Britain, France, and Russia (later to be joined by Italy and the United States). Dutch soldiers now drilled in front of the Peace Palace in case the Netherlands should be compelled to abandon its neutrality.[91] The Permanent Court of Arbitration, having discretely handled another eleven cases since 1907, ceased its activities. By this time, another official gathering of states at The Hague appeared highly unlikely. A third such meeting had been planned for 1915 but was never to be held, though the International Congress of Women—a women's peace conference boasting 1,200 delegates from fifteen countries—convened in The Hague that same year.

While Carnegie persisted with his futile efforts to restore sanity to the continent, others denounced the elitist, insular culture of international diplomacy on display at the Hague peace conferences before the war. In October 1914, the muckraking journalist and socialist activist Charles Edward Russell spoke at Carnegie Hall in New York City about the horrors of warfare to which he bore witness in Europe. At the conclusion of his talk, Russell discussed his visit to The Hague before the war, where, in his words, he had been "shown the tables where the representatives of the crowned heads of Europe had sat when they had signed treaty after treaty and where they had ratified rule after rule of civilized war." "All those treaties and all those rules have been broken," he observed bitterly. "Hell is paved with the fragments of peace treaties signed in that Peace Palace."[92] Though there had in fact been no treaties signed in the Peace Palace, Russell had a point. European statesmen had spoken a great deal of civilizing war, all the while preparing for it. The Hague was now indelibly associated with this road to war and this world gone mad.

## Visualizing Internationalist Hierarchies

Had the Peace Palace, then, been nothing more than a castle in the air? The building was a Renaissance dreamscape divorced from the realities of the present. A visitor walking through its gardens and halls might well have forgotten about the ascendancy of the nationality principle to the forefront of European concerns over the course of the nineteenth century, not to mention democratization and the social question. Its hoary allegories ignored the transformation of the European scene, providing no purchase for the great mass internationalist movements that had arisen in the wake of the French and Industrial Revolutions. Nowhere could be found the faintest trace of Giuseppe Mazzini's dream of a Young Europe of fraternal and democratic nation-states, much less Karl Marx's appeal for proletarian solidarity across national frontiers. The Peace Palace instead recalled an older cosmopolitanism suited to European elites who saw themselves as impartial custodians of peace unmoved by mass politics. Its function was to demarcate the cultural boundaries of international law, illustrating the common standards required for the attainment of sovereign rights and full membership in the society of civilized nations.

Notwithstanding the industrial slaughter underway on the battlefields of the First World War, civilized Europe remained on full display in the Peace Palace's resplendent halls, courts, and grounds.[93] Its very substance reflected the claims of various states to membership in the society of civilized nations. The Pacific Settlement of International Disputes adopted in 1899 had made a point of "recognizing the solidarity which unites the members of the society of civilized nations" in its preamble. At the second Hague peace conference, French diplomat Baron d'Estournelles de Constant had proposed that each delegation send materials and objects d'art "representing the most pure specimen of its national craftsmanship, in such a manner as the Palace, expression of universal will and hope, is made of the very substance of all countries."[94] In turn, Italy supplied marble for the pillars and floor of the entranceway, Greece installed a marble replica of the Knossos Throne of Crete, Switzerland took responsibility for the clocks, and so forth.[95] According to a British observer, "nothing like it has been seen since the legions of ancient Rome in a far other spirit ravished the known world to decorate the capital."[96]

According to nineteenth-century legal positivists, non-European states could gain admission to the society of civilized nations on the condition that their domestic and external affairs met certain objective requirements, among them a legal system that guaranteed classical liberal freedoms, which effectively meant permitting Europeans on their territories to trade, travel, practice religion, and purchase property as they pleased.[97] These rights had been secured in the law of nations in eighteenth-century Europe, which, it should be noted, was hardly considered a paragon of civilized conduct given

the frequent wars between European states at the time.[98] In some areas of the Peace Palace, however, the notion of civilization as a series of stages along a single continuum merged with a pluralistic conception that posited the existence of a number of civilizations with distinctive, though commensurable, attributes.[99]

The influence of the Far East on the Peace Palace interior was most evident in the administrative council room, where cloisonné vases occupied each of the corners and gold-embroidered, hand-woven silk Gobelin tapestries hung on the walls. The first group, a gift from China, was executed in the style characteristic of the Qing dynasty. For the second, a gift from Japan, artist Kikuchi Hobun had combined French and Japanese techniques to depict a tranquil world populated by flora and fauna from his native country.[100] The governments of both China and Japan had shown great dexterity in invoking doctrines of international law for their own geopolitical ends.[101] Here, Japan proved itself well aware of the aesthetic dimensions of this game, demonstrating the cultural capital to qualify at once as a member of the society of civilized states and as an independent nation-state with its own unique genius.

Whether the East was seen as an equal partner of the West was another matter. The interior designer Herman Rosse, who had traveled extensively through Asia and trained in the Asian arts, had covered the room with bronze engravings of Asian women and Asiatic mystical symbols. This Orientalist gesture was as suggestive of cultural difference as it was of cultural transfusion. The Eurocentric ethnic hierarchies that pervaded fin-de-siècle internationalist thought were in evidence in the Peace Palace's allegorical imagery. In its stained glass windows, for example, while men of different races could be found among the ranks of fighters and laborers, those associated with modern professions were distinctly European looking. It went without saying that the skin of almost all of the allegorical figures in the Peace Palace was lily-white. The overall impression was that nations deemed outside of the space of Europe could attain the highest rungs of the ladder of civilization, seamlessly becoming part of the fabric of international life without giving up their cultural particularities—as long as they had the geopolitical heft, that is.

What, then, of the Ottoman Empire, which had long been known as the "sick man of Europe" and recently suffered catastrophic losses in the Balkans? Its donation of an enormous Ottoman carpet certainly did not have the effect desired. According to one journalist present at the Peace Palace opening, the Turkish rug appeared "a gift symbolic of his fate, to be trodden under the foot of man."[102] The status of the Ottoman Empire as a fully sovereign member of the society of civilized states was questionable. The Treaty of Paris that followed the Crimean War (1853–1856) had stipulated that the Ottoman government was to have the right to "participate in the advantages

of public law and the Concert of Europe." It was left ambiguous whether this meant that the Ottoman Empire was to have exactly the same international rights and obligations as the Great Powers that constituted the Concert of Europe (Austria-Hungary, Britain, France, Prussia, and Russia). In the same document, the Concert affirmed its prerogatives as guarantor of the rights of Christian minorities residing in Ottoman lands.[103] The Great Powers did not reciprocate by conceding similar international protection for the Muslim populations of their own empires.

Regardless, the formal principles of international law carried little weight among the humanitarians of the day. In Britain, the Liberal MP William Gladstone inveighed against any strictures on humanitarian intervention in defense of Christians under Ottoman rule. The interests of "humanity," he insisted, should trump legal technicalities, as had been the case with the British anti-slavery campaign earlier in the century. "Human sympathy refuses to be confined by the rules, necessarily limited and conventional, of international law," Gladstone explained in his pamphlet *Bulgarian Horrors and the Question of the East* (1876), rejecting outright Ottoman sovereignty and, more generally, the doctrine of noninterference in a state's domestic affairs. Then, for good measure, he added insult to injury, warning that if Christians suffered massacres anew then "the integrity of Turkey should mean immunity for her unbounded savagery, her unbridled and bestial lust."[104]

By contrast, the Turks' longtime nemesis the Russian Empire made its presence felt in the Peace Palace with a massive jasper vase measuring over 11 feet in height and over 3,000 kilograms in weight. There could be no mistaking the vase's Russian craftsmanship, nor could one fail to notice the bronze double-headed eagle of the House of Romanov. Beneath this monumental affirmation of national identity was a subtle indicator of Russia's eagerness to prove it belonged in "civilized Europe," for, although the insignia of Nicholas II was written in Cyrillic, the text attributing the gift to the tsar on the vase's base was written in French. The mottos on the ceramic tiles accompanying the gift—"Peace will extinguish the flames of war" and "Justice uplifts the people"—were written in Latin.

Russia had never been considered part of the *res publica Christiana*. In the early modern period, this proved a godsend. During the wars of religion that ravaged its Western neighbors, Russia had the distinct advantage of being a Christian nation while at the same time not party to the internecine conflicts between Catholics and Protestants. The subsequent reforms undertaken within the Russian Empire, combined with its growing military strength, made it a key player on the European international scene, a role confirmed after its critical contribution to the defeat of Napoleon and the negotiation of the peace that followed. Long before Gladstone's ascendancy in British politics, Russian officials had argued for the principle of humanitarian intervention in defense of Orthodox Christian populations, compelling the Ottomans