Oona Hathaway and Scott Shapiro’s *The Internationalists And Their Plan to Outlaw War* is an ambitious book which has attracted wide attention. The authors are lawyers rather than historians, but unlike Michael Walzer in his celebrated *Just and Unjust Wars*, who uses history as a source of examples to examine fundamental questions of international law and morality, Hathaway and Shapiro advance an essentially historical argument. They claim that the now largely forgotten Paris Peace Pact of 27 August 1928 ‘was among the most transformative events of human history...’ (p. xiii) It ended an old order, dating back at least to Grotius in the 17th century, in which war was not only legal, but was the only way of enforcing justice. Conquests were frequent in this old order, its woods ‘were deep and dark’. In the new world order which derived from the Pact, there is, at worst, ‘light bramble’ (p. 329). Of course, Hathaway and Shapiro recognise that the 17 years after 1928 were not ones of peace and stability. They explain that in outlawing war, the signatories of the Pact ‘had no inkling of the chaos they would unleash’, and ‘provided nothing to take the place of war’ (p. 303). This was done later, by the British international lawyer Hersch Lauterpacht, between 1946-9. Like Grotius, he laid the basis of a world order, a new one in which war ‘could no longer be resorted to either as a legal remedy or as an instrument for changing the law’ (p. 303).(1) Thereafter states have had to achieve their aims by co-operative means.

That the Pact had so profound an effect is a hard case to argue.(2) This review tries to show why Hathaway and Shapiro have failed. It will begin by pointing to some of their curious errors which must undermine the confidence of any historically informed reader. It will go on to show that the old order was not so dominated by aggression and conquest as they suggest, and that whatever new order does now exist has largely followed from and built upon the old one, rather than replacing it with something fundamentally different. It will look more closely at the inter-war period, showing that insofar as there was a break in the 20th century, this was linked to the establishment of the League of Nations, which they are inclined to slight, rather than to the Pact, which they consider of such central importance.

To begin with the errors, of which there are far too many. Many reviewers now downplay their criticisms by calling them quibbles. Nevertheless, beyond a certain point quibbles begin to count. It probably matters little that a list includes Zambia and Northern Rhodesia as different countries, and equates Malaysia with the
earlier and smaller Federation of Malaya (p. 347), except that the authors repeatedly try to use such lists and figures almost as exhibits in court to prove their case. Advocacy comes easily to lawyers; historians need to be more concerned with accuracy. Especially puzzling is the authors’ categorisation of Belgium as one of the world’s ten largest states in area in 1816, when it was still only a part of the newly-established Kingdom of the Netherlands. It therefore appears in figure five (p. 350), which is very difficult to follow in detail, but which is intended to show the changes in size of the areas controlled by those ten states from 1816 to the present. Belgium’s remains constant, increased neither by King Leopold II’s creation of the Congo Free State in 1878, nor by its take-over by Brussels in 1908. A small upward blip must reflect the incorporation of Ruanda and Burundi after the First World War, but in 1960, when the Congo became independent, Belgium completely disappears from the figure, as if it had lost all that it had had in 1816. The figure’s purpose is to highlight the end of empire and the vast increase in the world’s area occupied by newly independent states since the Second World War. If a chart is felt necessary to make so uncontentious a point, care should be taken in its construction. Somewhat less bizarre, but still misleading, is the statement that Great Britain seized Nigeria in 1885 (p. 318). Whatever happened in that year concerned other European powers rather than Nigerians, and was only a stage in a process of British acquisition of many different territories, which began with the annexation of Lagos in 1861, and was still going on when these were consolidated into the new entity of Nigeria on 1 January 1914. In 1885 there was nothing called Nigeria for the British to seize. This projection of post colonial states and their boundaries back into the precolonial period, of which this is but one example, badly distorts the history of the non-European world.

Perhaps the most egregious error is the claim that, after losing his struggle with the Communists in 1949, Chiang Kai-shek fled to Taiwan, ‘and proclaimed the Republic of China, establishing it as an entity separate from mainland China’ (p. 324). In fact, the Republic of China had been proclaimed by Sun Yat-sen on 1 January 1912. Chiang considered himself still to be its rightful leader. He established no new state. During the war with Japan, he had moved to a provisional capital at Chongqing. Now he moved to one at Taipei. Theoretically the capital remained at Nanjing. Much of China had been under Japanese control before 1945; after 1949 much more was under the control of ‘bandits’. The parliament moved to Taipei, but members elected on the mainland before 1949 retained most of the seats for more than a generation. Taiwan had only the representation to which it was entitled as a single province. The Republic of China, as the legal government of the whole country, occupied the Chinese seat at the United Nations and on the Security Council until 1971. Notoriously, that Taiwan was not a separate country was just about the only Chinese question on which Beijing and Taibei agreed. Its status is still at the centre of domestic politics on the island, with Beijing having been so far successful in blocking attempts by non-Guomindang governments to issue a unilateral declaration of independence. This is all too well known for Hathaway and Shapiro to have made a careless error of the kind already discussed. They consistently assert that the doctrine of ‘non-recognition’, first enunciated by American Secretary of State Henry Stimson in 1932 in respect of the Japanese puppet state of Manchukuo, remains one of the most important sanctions of the new world order. ‘Might would no longer make Right’ (p. 169). Washington having to recognise the Peoples’ Republic of China was the most conspicuous setback for that principle. States have eventually to accept and validate realities. Had the authors passed this case over in silence, as they did with the dismemberment of Pakistan and creation of Bangladesh after the Indian invasion of 1971, this might have been excused as only too human an evasion of an inconvenient truth. Instead they chose to take us deep into the world of alternative facts.

However, the problems with this book are not just with details, or with the treatment of particular points which may or may not be considered important, but with the basics of the argument. Hathaway and Shapiro present the old order as one in which states lived in fear of annihilation, and only large, expanding states could thrive (p. 345). In an elaborate numerical charade they argue that between 1816 and 1928 ‘the average state … had a 1.33 percent chance of being the victim of conquest in any given year’ (pp. 313-4). This argument seems plausible only because it conflates the process of European imperial expansion into non-state areas with the evolution of relations between recognised states in Europe and the Americas. As they acknowledge in a subsequent chapter, in the early modern period much of the world was not yet organised
into states (p. 328). The process began in Europe, which by the 18th century, was, as Edward Gibbon famously described it, a great republic ‘divided into twelve powerful, though unequal, kingdoms, three respectable commonwealths, and a variety of smaller, though independent, states...’.(5) The balance of power, accepted as the foundational principle of international relations, was believed to ensure the survival of even the smallest of these recognised states, as to a large degree it did. Gibbon’s humanity may have made him overly sanguine, but by the mid-18th century, war and conquest were not considered morally indifferent in Europe. War might not be waged just for the fun of it. As the authors stress, rulers felt the need to issue ‘manifestos of conquest’ justifying their actions, using arguments such as self-defence (in 67 per cent of such manifestos (p. 43)), which for the most part would still be accepted today, even by Hathaway and Shapiro.(6) Such an idea would not have occurred to Chingiz Khan. This Europe broke down with the ideological wars of the French Revolution and the French attempt to remake the map of the continent. Between 1792 and 1815 many states were indeed eliminated, especially within the Holy Roman Empire, itself a conspicuous casualty. After the defeat of Napoleon, the framers of the Treaty of Vienna tried to restore the old system in its essentials: legitimacy and the balance of power. The revolutions in the Americas brought a substantial number of new states into it. Major changes were now considered to require international sanction, and the pacificity of international relations was underpinned by the spread of the idea that trade might be more a co-operative than a competitive activity. Unlike the 18th, the 19th century would appear in retrospect as one of relative peace, interrupted by occasional brief wars, rather than one of wars with only short intervals of peace. Several small states were indeed swept away in the processes of Italian and German unification in the middle of the century, and one, the Papal State, was reduced to an anomaly. Otherwise ignored by the authors, this process is clearly reflected in figure three (p. 338), which, unlike figure five, deals only with internationally recognised states, and repays careful study. It shows that 1855-75 and 1935-45 are the only periods in which the number of states declined. The Republic of Krakow, annexed by Austria in 1847, was probably the only 19th-century established state to fit into the process of conquest and elimination which Hathaway and Shapiro consider typical of the old order. While other crises could be managed, or led only to limited war, a threat to the independence of a sovereign state, as that of Austria-Hungary to Serbia in 1914, was a crisis of the system, and triggered general war. The reaction to the Iraqi conquest of Kuwait in 1990 shows that this principle still applies. The Gulf Wars which preceded and followed it provoked very different international responses. If conquest has indeed now been much diminished, that is the product, not of the outlawry of war by treaty in 1928, but of the transformation of colonial territories into sovereign states, and their integration into what had begun as the European state system, in which their independence has to be maintained as long as their people want it.(7)

Obviously, the First World War did bring changes to the international system, most strikingly through the creation of the League of Nations. As this is the period on which my comments are most likely to be valuable, and, as I believe that the authors have got it wrong, I shall try to deal with it more closely.(8) Many recognised that the European balance of power had broken down. It would have to be replaced by something more robust, with an institutional framework, and bringing in the United States of America. At first the idea was of a treaty of guarantee to which all would subscribe. It was quickly recognised that this in itself would be inadequate. Notoriously, the First World War began with a powerful state dismissing a treaty as a scrap of paper. Would another piece of paper be any more effective? As the British writer H. N. Brailsford put it in 1918, ‘You cannot allow States to go on in the old way from year to year, with no reason to remember that a league exists, and then expect them to bow to it when you wave a musty parchment in front of their raging passions’.(9) The state system needed both a guarantee pact and a continuously functioning organisation. Hathaway and Shapiro follow their internationalist heroes and consistently underrate the League of Nations, because its Covenant did not outlaw war (p. 109). Instead, its drafters believed that by making war procedurally difficult they would render it practically impossible. Would an aggressor state bother to submit a dispute to an enquiry by the Council, wait up to six months for a decision, and then wait a further three months before going to war? This was the most expeditious procedure offered by the League for legal war. No state ever tried to take advantage of it.

The fundamental weakness of the League was the refusal of the United States to enter it. Without American
The failure of the Geneva Protocol was followed by the success of Locarno, and the entry of Germany into the League of Nations. The recovery of international stability after the chaos of the early 1920s, was one of the most remarkable, if still unrecognised, transformations in international history. If there was a turning point, it was not with the musty parchment of the Pact, but with the establishment of the League, and then with its acceptance as central to the new world order. The change in the international atmosphere was marked as early as 1922, when Arthur Balfour, the British negotiator of the Washington Treaty, described it as a step away from ‘the preposterous fallacy that there was a fixed amount of advantage to be got by somebody, and that if one nation got it another nation lost it,’ to the realisation that ‘the advantage to the part is best achieved by the advantage of the whole’. (11) The Kellogg-Briand Pact may have later, for a time, symbolised the achievement of a new order, but practical statesmen valued it only as, hopefully, a means of bringing the United States closer to Europe politically. In the 1930s they would, painfully, learn to expect nothing from the Americans but words. (12)

Hathaway and Shapiro are right in seeing the second post-war period as an attempt to recover what had fleetingly been achieved in the first. Nevertheless, they overstate its success. They depict a world of peaceful co-operation in which states, free of the fear of conquest, no longer have to worry about comparative military advantage (p. 343). It is hard to see the Cold War in that light. (13) They do recognise that there is ‘still so much conflict’ (part of the title of chapter 15, pp. 352-70). They attribute much of this to ‘bungled colonial handovers’, as if better research and drafting in colonial capitals might have prevented the upheavals of what their figures rightly show to have been one of the most fundamental transformations in world history. Decolonisation and national liberation cannot be well understood by analogies with conveyancing (pp. 353-9). Colonies had been, for the most part, artificial creations enclosed by arbitrary boundaries. Given this, their persistence as independent states for several generations is both remarkable and largely unappreciated. The early decision of the Organisation of African Unity to maintain the colonial boundaries was an important part of this process, which the authors ignore. They also fail to note that the dissolution of the Soviet Union might usefully be considered in the same light, as a bungled transfer, especially as the Crimea, the annexation of which by Russia they vigorously condemn (pp. 390-4), was transferred to the Ukraine by a leader prone to impulsive, unconsidered acts, in 1955, when it hardly mattered, as the unity of the ruling Communist Party then completely eclipsed the paper federalism of the Soviet state, and a substantial part of the population, the Tatars, was in apparently permanent exile.

Hathaway and Shapiro readily acknowledge that the Paris Pact is now little remembered. Their own figures show how little influence its forgotten formulae now have compared to the quotidian reality of functioning international organisation. Whereas in the inter-war period the League of Nations failed to achieve universality, its post-war successor, the United Nations, has. New nations wish to be in the UN because it enshrines their position as recognised states, and therefore their immunity from conquest and destruction. By contrast, whereas before the war some 63 states, several of them outside the League, quickly signed the Pact, only four have bothered to do so since 1945 (p. xii). Three of these are small Caribbean states, one of which, Barbados, would go on to play a prominent role in the invasion of Grenada in 1983. Hathaway and Shapiro
struggle to dissociate the United Nations from the League, while linking it instead to the Pact. Unfortunately, Article 4.2 of the Charter, that Members ‘shall refrain from the threat or use of Force against the territorial integrity or political independence of any state…’, which they cite in support of their argument (p. 353), clearly owes much more to Article 10 of the Covenant than it does to the Pact. The long awaited definition of aggression formulated for the International Criminal Court at Kampala in 2010 hinges on ‘a manifest violation of the Charter of the United Nations’ (14), rather than on the Pact of Paris. Introducing the first draft of the Covenant, Woodrow Wilson famously declared, ‘A living thing is born’. (15) Essentially he was right. By contrast, the Kellogg-Briand Pact is important mainly to those who wish to rummage in the dustbins of history.

Bound up as it is with a deeply flawed and greatly overstated thesis, The Internationalists fails as a work of history. Nevertheless, entombed within it are discussions which might have formed useful articles. The authors show that Shotwell may have had an influence on early American drafts of the United Nations Charter (pp. 194-8). They set out how Lauterpacht’s interpretation of the Pact changed the practice of neutrality. Under the old system, in which war was legal, states were barred from engaging in unneutral acts. Under the new system states are empowered to take the action they consider desirable to prevent or reverse aggression without precipitating themselves into war (p. 377). Hathaway and Shapiro view this positively, but there has been a price to pay for eliminating war as a recognised legal state. How can there be laws of war if war is itself illegal? It also eliminates the control that legislative bodies in countries like the United States used to have over the road to war. Formal declarations of war passed into history after 8 August 1945. British military authorities pressed for them in the Falkland Islands and in Iraq, but were overridden. In the United States responsibility for what are effectively decisions for war or peace has passed from Congress to the President. Wars are still fought, but they may not speak their name. Paradoxically, the symbolic use of ‘war’ has expanded as its legal use has contracted. There have been wars against poverty and wars against drugs. The language of war underlines that the policy is seriously meant, and will be relentlessly pursued, often with diminished concern for existing legal restraints. With the ‘War Against Terror’ this usage has seeped back into international relations. As American lawyers, one would expect the authors to have been sensitive to this, but they are not. The legal black hole of Guantanamo passes unmentioned. In international relations the outlawing of war has, paradoxically, diminished the role of law, but, arguably, enhanced that of humbug.

Notes


3. In fact the Republic of China includes not just Taiwan, but also several offshore islands of the province of Fujian. The authors do not quite know how to deal with this. Nor do they recall that Guomindang forces also retreated into the extreme southwest of China where they would pioneer the establishment of the ‘golden triangle’, which was long prominent in the illegal drugs trade. Back to (3)

4. By ‘conquest’ they mean loss of territory as well as loss of independence. Back to (4)

5. The History of the Decline and Fall of the Roman Empire, vol. 3 (Penguin edition), p. 513. This section of The Decline remains of value to all who wish to understand rather than deride the old European order. Back to (5)

6. Hathaway and Shapiro accept that ‘self defence’ remains a ground for war, though they do worry that this might be abused, and that current American actions against ‘terrorism’ threatens to make this ‘the exception that swallowing the rule against war’ (p. 416). They do not note that states are the sole judges of whether their action constitutes self defence, and while they point out that the United Nations Charter allows self defence only ‘if an armed attack occurs’ (chapter VII, 51) they do not insist that all other appeals to self defence are therefore invalid. Curiously, they seem willing to accept the same sort
of historical justification for the Polish annexation of Silesia in 1945 (p. 321) that Frederick the Great used for seizing the same area in 1740.\textit{Back to (6)}

7. Elimination of a state by consent, as with the incorporation of the German Democratic Republic in the German Federal Republic, may be accepted, but usually requires international assent. Hathaway and Shapiro do not deal with such cases.\textit{Back to (7)}


10. F.O. minuting 6-12 August 1924, quotation from Arthur Yencken (F.O. Assistant to the League Minister), 11 August, W6242/134/98.FO371/10569, The National Archives, Kew.\textit{Back to (10)}

11. \textit{The Times}, 18 February 1922.\textit{Back to (11)}


13. Hathaway and Shapiro are somewhat elusive on chronology. At this point they refer to ‘the present era’ and ‘our current world’, but if that era began with Lauterpacht’s formulations of 1945-9, then it has to include the Cold War. The authors nowhere identify 1989 or 1991 as the beginning of a new world order.\textit{Back to (13)}

14. Hull, ‘Anything can be rescinded’, p. 26.\textit{Back to (14)}


Other reviews:

Guardian

London Review of Books
https://www.lrb.co.uk/v40/n08/isabel-hull/anything-can-be-rescinded [3]

Times Higher Education

Financial Times
https://www.ft.com/content/9e4191c6-8db5-11e7-9580-c651950d3672 [5]

Literary Review
https://literaryreview.co.uk/peace-of-mind [6]

New York Times

Source URL: https://reviews.history.ac.uk/review/2257

Links