



After the Great War : International Law in Austria's First Republic, 1918–mid 1920 s

Abstract : This article studies the role of international law in the Austrian republic after the First World War – a time of hope and concerns for the international legal order. Although the war was perceived as backlash for international law, its scholarship expanded in Austria until the mid-1920 s. The Austrian international lawyers strived to integrate themselves in the broader transnational academic community. Their contribution to this field developed out of the constitutional debates of the Habsburg Empire. However, the Austrian jurists also omitted to treat certain international issues in their scholarship, such as the relief program by the League of Nations for Austria's economy in crisis.

Key Words : international lawyers, Austria, Interwar period, Hans Kelsen, international law, Positivism

Résumé : Cet article examine le rôle du droit international dans la République d'Autriche après la Première guerre mondiale – un temps d'espoir et de souci pour l'ordre juridique mondial. Même si la guerre avait été perçue comme un contrecoup pour le droit international, son étude s'est élargie en Autriche jusqu'au milieu des années 1920. Les juristes internationaux ont cherché à s'intégrer plus largement dans la communauté académique transnationale. Leur contribution à la discipline s'est développée à travers les débats constitutionnels portant sur l'Empire des Habsbourg. En revanche, les juristes autrichiens ont négligé certaines problématiques dans leurs études, à l'image du programme de secours introduit par la Société des Nations pour l'économie autrichienne en crise.

Mots-clés : juristes internationaux, Autriche, interbellum, Hans Kelsen, droit international, Postivisme

Introduction

1. In times of political and economic crises, the shared collective memory of the past is often consulted to understand the present. Comparisons with historical examples are quickly at hand when journalists, politicians or academics try to interpret recent events. In Europe, today's main reference point for orientation seems to be the interwar era¹. This includes not only the current threats to democracy, economic recession or technological innovation, but also the transformation of international relations and its legal framework².

2. The study of the history of international law grew out of the wish to situate ourselves in a globalized world and deliver historical informed interpretations of today's challenges³. It supposes that the international legal order matters, mitigates and shapes conflicts at the same time. The editors of this volume emphasized in the introduction to this volume the plurality of methodological approaches and subjects within this relatively new legal historical discipline⁴. There are new research interests arising against the background of a changing international legal order. The post-cold war situation and the ascent of new global players also question traditional perceptions of the legal history of Europe. This raises anxiety, hopes and concerns in our present times.

3. This text is about the hopes and concerns for the international legal order of a certain group of people during the interwar years. These individuals were raised and educated in the multinational Habsburg Empire and found themselves after the First World War in a small republic with an uncertain future. The key interest of this article is the role of international law for this newly founded state⁵. The paper studies the question which part international law played in forming the post-war situation in Europe by concentrating on the Austrian republic during this time of transition for the international legal order. It follows an intellectual historical approach and analyzes the historical discourses of Austrian international lawyers in the immediate years after the Great War. The focus will be on how international legal discourses developed in the new state and which position international lawyers took in these debates. It seeks to provide an overview of the role that international lawyers and doctrines played, tried to play and did not play in the Austrian republic during the interwar period. The term « Austrian international lawyer » will be used in this paper to describe those writers, who held Austrian citizenship after the disintegration of the Habsburg Empire or for scholars, whose citizenship might have changed, but still held close ties to Austrian legal academia.

4. The recent centennial of the Paris Peace Conference after the First World War offered an opportunity to revisit the role international law played in many different aspects⁶. One consequence of the peace treaties was the dissolution of the Habsburg Empire and the foundation of new nation states in central, eastern

1 See e.g. M. Kettle, « The political landscapes of Brexit Britain and Weimar Germany are scarily similar », *The Guardian*, 16 May 2019 ; K. Urschinger, « Wissenschaftler vergleichen : Machtergreifung Hitler vs. Heute », *swr3.de*, 2019 ; A. Kilb, « Wir müssen das Spiel ändern », *Frankfurter Allgemeine Zeitung*, 14 February 2020, p. 9 ; C. Pradeau, « Introduction. Le devenir-époque du présent », *Littérature*, 193, 2019, p. 5-12.

2 See e.g. G. Sluga, « Remembering 1919 : international organizations and the future of international order », *International Affairs*, 95, 2019, p. 25-43 ; O. Hathaway, S. J. Shapiro, *The Internationalists, How a Radical Plan to Outlaw War Remade the World*, New York, Simon & Schuster, 2017.

3 See e.g. the overview volume B. Fassbender, A. Peters, eds., *The Oxford Handbook of the History of International Law*, Oxford, Oxford University Press, 2012.

4 R. Cahen, F. Dhondt, E. Fiochi Malaspina, « L'essor récent de l'histoire du droit international », *Clio@Themis*, 18, 2020.

5 See e.g. L. V. Smith, *Sovereignty at the Paris Peace Conference of 1919*, Oxford, Oxford University Press, 2018.

6 See e.g. the special issue « World Politics 100 Years after the Paris Peace Conference », *International Affairs*, 95/1, 2019 ; Payk, *Friede durch Recht. Der Aufstieg des modernen Völkerrechts und der Friedensschluss nach dem Ersten Weltkrieg*, Berlin, De Gruyter, 2018 ; A. Suppan, *The Imperialist Peace Order in Central Europe : Saint-Germain and Trianon, 1919-1920*, Wien, VÖAW, 2019.

and southern Europe. So far, the importance of the discipline of international law for this newly founded states is rarely having a place in the latest overview volumes on the history of international law⁷. In the most eminent intellectual history of international law by Martti Koskenniemi, the author's emphasis lies on particular European states, such as France, Germany and Great Britain, rather than on a nuanced picture of the new states that emerged after World War I in central Europe⁸.

5. Various biographical studies of international lawyers recently captured aspects about the personal and national background of specific scholars from these countries⁹. These scholars contributed importantly to develop what today is called a national tradition of international law¹⁰. The Austrian tradition was often equated with German approaches to international law¹¹. Despite several similarities (including an atmosphere of antisemitism¹²) that prompted the assumptions of one German speaking tradition of international law, the Austrian international lawyers differed in several ways from their German counterparts.

6. However, the aim of this text is far from writing a hagiography. Austrian international lawyers operated in a continuing global setting of colonialism, imperialism and power politics and were to a large extent complicit with this world order in the interbellum¹³. In addition, personal aspirations influenced the writings of authors as well as ideological or political aims. A phenomenon that can be easily observed in the attitudes of international lawyers during the authoritarianisms in Austria of the 1930 s and 40 s¹⁴.

7. This paper advances three arguments about international law in the early Austrian republic. Its method will be a discourse analysis based on the classical sources of intellectual history, particularly journal articles, reviews and books, for the time between 1918 and the mid-1920 s. Due to this vast amount of sources, an exhaustive study will not be feasible. The sources have been selected according to their importance for the general discourse in Austrian international legal scholarship and they were grouped around the recurring topics.

8. The first argument of this paper proposes that most international lawyers in Austria strived to integrate themselves into the broader academic community and debates in these years. The main discussion points for international lawyers were the consequences of the Great War and the peace treaties. Although they politically rejected the rules of the Treaty of Saint-Germain-en-Laye unmistakably, the way they treated these sensitive topics was only rarely polemical and mostly constructive¹⁵. Germany was the most important reference point for academic co-operation, but the legal debates in other countries were

7 See e.g. E. Jouannet, *The Liberal-Welfarist Law of Nations. A History of International Law*, Cambridge, Cambridge University Press, 2012 ; S. Neff, *Justice among Nations. A History of International Law*, Cambridge, London, Harvard University Press, 2014 ; H. Kleinschmidt, *Geschichte des Völkerrechts in Krieg und Frieden*, Tübingen, Francke, 2013. D. Gaurier, *Histoire du droit international public*, Rennes, Presses universitaires de Rennes, 2014. For an overview of the recent literature, see F. Dhondt, « Recent research in the history of international law », *Revue d'histoire du droit*, 84, 2016, p. 313-334.

8 M. Koskenniemi, *The Gentle Civilizer of Nations : The Rise and Fall of International Law 1870-1960*, Cambridge, Cambridge University Press, 2001.

9 For Austrian international law scholars, see e.g. M. García-Salmones Rovira, *The Project of Positivism in International Law*, Oxford, Oxford University Press, 2013 ; J. v. Bernstorff, *The Public International Law Theory of Hans Kelsen. Believing in Universal Law*, Cambridge, Cambridge University Press, 2010 ; F. Rigaux, « Hans Kelsen on International Law », *European Journal of International Law*, 9, 1998, p. 325-343 ; B. Simma, « The Contribution of Alfred Verdross to the Theory of International Law », *European Journal of International Law*, 6, 1995, p. 33-54.

10 The approach of Comparative International Law studies the differences in national traditions of international law, see A. Roberts, *Is International Law International?*, Oxford, Oxford University Press, 2017 ; A. Roberts, P. B. Stephan, P.-H. Verdier, M. Versteeg, eds., *Comparative International Law*, Oxford, Oxford University Press, 2018.

11 For a recent example, see e.g. A. Bianchi, *International Law Theories. An Inquiry into Different Ways of Thinking*. Oxford, Oxford University Press, 2017, p. 44.

12 N. Hammerstein, *Antisemitismus und deutsche Universitäten 1871-1933*, Frankfurt a. M., Campus, 1995.

13 See e.g. G. Sluga, P. Clavin, eds., *Internationalisms. A Twentieth-Century History*, Cambridge, Cambridge University Press, 2016.

14 B. Davy, U. Davy, « Haltung in finsternen Zeiten. Die Zeitschrift für öffentliches Recht zwischen 1933 und 1945 », *Zeitschrift für öffentliches Recht*, 69, 2014, p. 715-804.

similarly followed and the works of foreign authors were frequently cited and considered¹⁶. This is a particular characteristic of the years immediately following the war and the early 1920 s. This *rapprochement* in the immediate phase after the war culminated in the organization of the 31st meeting of the *Institut de Droit International* by the University of Vienna in 1924. This gathering remained the only meeting of the institute to be held in a city of the former middle powers during the interbellum¹⁷.

9. Second, the *rapprochement* was connected with a turn to theory and the foundation of the so-called Vienna School of international law. The late imperial constitutional thinking style of the Austrian *Staatsrechtslehre* shaped the arguments about the international legal order. The federal structure and regional autonomy within the empire promoted a multi-layered analysis of the law in the double-monarchy. This is illustrated by the discussions about structural reforms of the monarchy during the First World War. These debates about the constitutional viability of the empire informed the argumentative repertoire in the consideration of the international legal order.

10. Third, for a better grasp of international law in the interwar period and the role it played for the new state, it is not only important to look at the writings of the Austrian international lawyers, but also to keep an eye on the subjects they omitted. An important international legal topic was not addressed by international lawyers, but the economists of the time : the League of Nations relief program for Austria¹⁸. As one of the first states, Austria received comprehensive economic aid orchestrated by the Financial Committee of the League of Nations, an international organization, which expressed « the embryonic idea of a necessary correction in the excessive inequalities between states if these were detrimental to the whole »¹⁹. Yet, (Austrian) international lawyers were not keen in writing about this original issue. Although post-war Austria contributed in this form to the development of the League's international economic governance mechanisms²⁰, international lawyers did not seem to be much concerned with these developments in their writings. This can be seen as departure point for a division of labor among the disciplines of international law and economy that is in some parts lasting up until today.

I. Debating and Disputing the Peace : The Immediate Post-War International Law

11. The years following the defeat of the German and Austria-Hungarian Empire as well as their allies spurred a high production of international legal literature in the new Austrian republic and beyond²¹. The

15 For an illustrative example of such remarks on the Treaty of St. Germain, see the text by Franz Klein, former minister of justice under the Habsburg Empire and delegate to the Paris peace conferences : F. Klein, « St. Germain-Friede », *Wörterbuch des Völkerrechts und der Diplomatie*, vol. 2, Berlin, Leipzig, Walter de Gruyter & Co., 1925, p. 434-439.

16 See the far over 100 Austrian contributors to the significant encyclopaedia of international law during the interwar time, the K. Strupp, ed., *Wörterbuch des Völkerrechts und der Diplomatie*, 3 vols., Berlin, Leipzig, Walter de Gruyter & Co., 1924-1929. Austrian contributors can be identified, or at least assumed, by their geographical affiliations in the register of authors, see *ibid.*, vol. 3, 1929, p. 1314-1316.

17 The significance of the meeting of Vienna for the *rapprochement* was also shortly stressed by the contemporary R. A. Métall, « Institut de droit international », *Wörterbuch des Völkerrechts und der Diplomatie*, vol. 3, ed. by K. Strupp, Berlin, Leipzig : Walter de Gruyter & Co., 1929, p. 864-868 (p. 865).

18 For the most recent study of the international reconstruction of Austria, see N. Marcus, *Austrian Reconstruction and the Collapse of Global Finance, 1921-1931*, Cambridge (Massachusetts), London, Harvard University Press, 2018.

19 E. Jouannet, *The Liberal-Welfarist Law of Nations. A History of International Law*, Cambridge, Cambridge University Press, 2012, p. 179.

20 P. Clavin, « The Austrian Hunger Crisis and the Genesis of International Organization after the First World War », *International Affairs*, 90/2, 2014, p. 265-278.

21 During the war, the jurist have already been active contributors to the debate, see J.-L. Halpérin, « Die Engagements der französischen, deutschen und österreichischen Juristen während des Ersten Weltkriegs. Versuch einer vergleichenden Lektüre », *Zeitschrift für Neuere Rechtsgeschichte*, 39, 1/2, 2017, p. 77-86.

Austrian republic was treated as legal successor of the Habsburg monarchy at the Paris Peace Conferences²², but perceived of itself as a new state in the international concert²³. As the post-World War I international legal debates in Austria indicate, this was a formative time for many legal scholars, but also for the field of international law as an academic discipline. This did not come surprising as the Paris peace treaties were in an unprecedented way using international normative tools to reconstruct global order after a massive disruption. The treaties were more legalistic than any peace settlement before in history²⁴. International law became a particularly important instrument for the political discourse after the First World War.

12. In addition, the claims for an international criminal law were rising among the allied powers²⁵. Calls for punishing the German emperor for the aggression and war crimes were looming²⁶. For the powers that waged the war, international legal accountability formed an important topic in coming to terms with the end of the war. Therefore, legal reports about the conduct of war were collected and published from different governments²⁷. Common ground was hardly found in the various compiled volumes and these works often echoed nationalist purposes.

13. On the other hand, international lawyers were aware of the political dimensions of their field. Many treatises or articles by Austrian international lawyers about sensitive subjects started with reminders on the strictly legal nature of the questions treated in these texts or that the political opinions of the authors should not be confused with the legal analysis²⁸. This attitude tried to strike a balance between managing to secure the international recognition of Austria's legal academia and also be responsive to the hardships the war and its end brought over the new state.

A. The International Lawyer as Political Advocates of the Empire : The Case of Heinrich Lammasch

14. There were two generations of international lawyers actively shaping the discipline in the Austrian republic after World War I. Almost all international law scholars of Austria's first republic had been in state offices, ministries or advising positions for the political branch during the war, due to the military conscription. Hans Kelsen, for example, held a high position in the Ministry of War, being a direct advisor

22 Article 177 incorporated this understanding in the Treaty of St. Germain : « The Allied and Associated Governments affirm and Austria accepts the responsibility of Austria and her Allies for causing the loss and damage to which the Allied and Associated Governments and their nationals have been subjected as a consequence of the war imposed upon them by the aggression of Austria-Hungary and her Allies. »

23 A. Merkl, *Die Verfassung der Republik Deutschösterreich. Ein kritisch-systematischer Grundriss*, Wien, Leipzig, Franz Deuticke, 1919, p. 2.

24 M. Payk, *Friede durch Recht. Der Aufstieg des modernen Völkerrechts und der Friedensschluss nach dem Ersten Weltkrieg*, Berlin, De Gruyter, 2018, p. 1 ; J. Leonhard, *Der überforderte Frieden. Versailles und die Welt 1918-1923*, München, C.H. Beck, 2018, p. 968.

25 H. Wiggenhorn, *Verliererjustiz. Die Leipziger Kriegsverbrecherprozesse nach dem Ersten Weltkrieg*, Baden-Baden, Nomos, 2005 ; G. Hankel, *Die Leipziger Prozesse. Deutsche Kriegsverbrechen und ihre strafrechtliche Verfolgung nach dem Ersten Weltkrieg*, Hamburg, Hamburger Edition, 2003 ; M. Lewis, *The Birth of the New Justice. The Internationalization of Crime and Punishment, 1919-1950*, Oxford, Oxford University Press, 2014 ; K. v. Lingen, „Crimes against Humanity“ – Eine Ideengeschichte der Zivilisierung von Kriegsgewalt 1864-1945, Paderborn, Schöningh, 2018, p. 135-192 ; D. M. Segesser, *Recht statt Rache oder Rache durch Recht. Die Abmündung von Kriegsverbrechen in der internationalen wissenschaftlichen Debatte 1872-1945*, Paderborn, Schöningh, 2010.

26 W. A. Schabas, *The Trial of the Kaiser*, Oxford, Oxford University Press, 2018.

27 See e.g. A. Mérygnac, E. Lémonon, *Le Droit des Gens et la Guerre de 1914-1918*, 2 vols., Paris, Recueil Sirey, 1921 ; J. W. Garner, *International Law and the World War*, 2 vols., London, New York, Bombay, Calcutta, Madras, Longmans, Green and Co., 1920 ; E. Fischer, B. Widmann, J. Bell, eds., *Völkerrecht im Weltkrieg*, Berlin, Deutsche Verlagsgesellschaft für Politik und Geschichte, 1927. For an overview, see A. Weinke, *Gewalt, Geschichte, Gerechtigkeit. Transnationale Debatten über deutsche Staatsverbrechen im 20. Jahrhundert*, Göttingen, Wallstein Verlag, 2016.

28 See the forewords of e.g. L. Strisower, *Der Krieg und die Völkerrechtsordnung*, Wien, Manz, 1919 ; A. Verdross, *Die völkerrechtswidrige Kriegshandlung und der Strafanspruch der Staaten*, Berlin, Verlag Hans Robert Engelmann, 1920 ; J. L. Kunz, *Das Problem von der Verletzung der belgischen Neutralität*, Wien, Manz, 1920.

to the minister²⁹. Alfred Verdross took office in the legal department of the Foreign ministry and went after the war to Berlin, where he worked for the Austrian embassy before returning to the legal department of the ministry in Vienna³⁰. The teacher of Verdross, Leo Strisower, became after the war a member of the committee that dealt with questions of restitution of artworks to the newly formed states formerly belonging to the Habsburg Empire³¹. One of the few international lawyers that were actively fighting at the front was Josef Laurenz Kunz³². Their scholarship was influenced by those experiences in a variety of ways. This section introduces some of these particularities, but also their commonalities.

15. The most prominent international lawyer that also raised the highest in a government position during the war was Heinrich Lammasch. He was appointed the (last) prime minister of the Austrian part of the Habsburg Monarchy by Emperor Karl I. on 27 October 1918. The renowned scholar and professor for criminal and international law took power shortly after the « Oktobermanifest » (16 October 1918) of Emperor Karl I.; a manifesto intended to restructure the empire in a federal state. This was the last attempt to save the already disintegrating Habsburg Monarchy.

16. Lammasch was an advocate of the multinational empire and warned against overstating the nation state³³. He propagated that the common work on the international legal order might be the best way to resist the temptations of nationalism³⁴. His major concern was the challenge to the international legal order posed by a strict understanding of state sovereignty³⁵. This criticism of absolute state sovereignty was a particular characteristic of the « modern » international legal theory after World War I. This topic was essential and recurred frequently in Austrian international legal scholarship in the aftermath of the war³⁶.

17. However, the intent behind Lammasch's appointment was to show the empire's sincere desire for peace to the allies. Lammasch was already a part of the Austrian delegation during the negotiations of the Hague Conventions 1899 and 1907 and gained a reputation as a pacifist throughout Europe³⁷. His commitment for a lasting peace in Europe was also driving his two most influential works during the war : *Das Völkerrecht nach dem Kriege* (International law after the war) and *Der Friedensverband der Staaten* (The peace union of states). The first book was published in 1917 and addressed the question if the war disrupted international law. He criticized the use of the unclear term « military necessity » to legitimize breaches of international law³⁸. At the same time, Lammasch polemicized against too high expectations of the international legal order (« It is bold to think that law can civilize the conduct of war »³⁹).

18. In his analysis of the prospective for international law after the war, Lammasch saw in the international administrative unions a model to organize the states around a common purpose⁴⁰. Mandatory diplomatic conciliation mechanisms and a procedure of coercion should guarantee the peace order and stop states from aggressions⁴¹. Lammasch's thoughts were frequently discussed in scholarly articles during the interwar years. Despite his scholarly and political influences, his period in office just lasted for three days.

29 R. A. Métall, *Hans Kelsen. Leben und Werk*, Wien, Franz Deuticke, 1969 ; see also T. Olechowski, *Hans Kelsen. Biographie eines Rechtswissenschaftlers*, Tübingen, Mohr Siebeck, 2020 (forthcoming).

30 I. Seidl-Hohenveldern, « Alfred Verdross. Biographical Note with Bibliography », *European Journal of International Law*, 6, 1995, p. 103-115.

31 R. A. Métall, « Leo Strisower », *Zeitschrift für öffentliches Recht*, 11, 1931, p. 1-11.

32 T. Olechowski, T. Ehs, K. Staudigl-Ciechowicz, *Die Wiener Rechts - und Staatswissenschaftliche Fakultät 1918-1938*, Göttingen, University of Vienna Press, 2014, p. 538.

33 H. Lammasch, *Das Völkerrecht nach dem Kriege*, Kristiania, H. Aschehough & Co., 1917, p. 57.

34 *Ibid.*, p. 59-60.

35 *Ibid.*, p. 61.

36 J. v. Bernstorff, *The Public International Law Theory of Hans Kelsen. Believing in Universal Law*, Cambridge, Cambridge University Press, 2010, p. 62.

37 M. García-Salmones Rovira, *The Project of Positivism in International Law*, Oxford, Oxford University Press, 2013, p. 188.

38 H. Lammasch, *Das Völkerrecht nach dem Kriege*, Kristiania, H. Aschehough & Co., 1917, p. 10.

39 *Ibid.*, p. 4.

40 H. Lammasch, *Der Friedensverband der Staaten*, Leipzig, Der Neue Geist, 1918, p. 15.

41 *Ibid.*, p. 22, 33.

On October 30, 1918, and under the impression of the disintegration of the Austrian Empire, he handed over all affairs to the newly founded German-Austrian State Council under Karl Renner.

B. The International Lawyer as Technical Advocate of the State

19. The importance of international law for the legal training was rising after the war. In Germany, the Hamburg-based Institut für Auswärtige Politik (Institute for Foreign Policy) and the Kaiser Wilhelm Institute for Comparative Public Law and International Law (today's Max Planck Institute for International Law in Heidelberg) were founded in the early 1920s⁴². Although Austria's territory drastically shrunk compared to the Habsburg Empire, its main university in the capital Vienna extended the number of chairs for international law in the interwar period. International legal studies experienced a similar rise at the universities of Graz and Innsbruck at the time⁴³. Since the appointment of Leopold Neumann at the University of Vienna in 1849, only one regular chair for international law existed and it was held by Heinrich Lammasch before the war⁴⁴. Leo Strisower was the second eminent scholar teaching the survey courses in international law and also publishing and practicing in the field⁴⁵.

20. Strisower was a key figure in Vienna's academic life as the teacher of Hans Kelsen, Alfred Verdross and Hersch Lauterpacht⁴⁶. As member of the *Institut de Droit International*, Strisower achieved to become the head of this important professional society and to bring its meeting to Vienna only five years after the conclusions of the Paris Peace Treaties; in a time that experienced national sentiments and revisionist policy by main international legal scholars in Germany and partly also in Austria. It was shortly after the First World War and the foundation of the Austrian republic that Leo Strisower and Alexander Hold-Ferneck were appointed as new full professors of international law. In contrast to Strisower, Hold-Ferneck represented German nationalist views, which he expressed also in his polemics against Hans Kelsen⁴⁷. These institutional adaptations contributed to the increase in publications and debates of international legal scholarship. The discourses following the Great War addressed the legal structure as such, but also practical problems of law and transnational co-ordination.

1. The Laws of War and World War I

21. There was a vast literature on war related topics in Germany. Alone the prestigious German international law journal *Niemeyers Zeitschrift für Internationales Recht* registered the publication of 107 new international law titles on the Great War in 1920⁴⁸. These books dealt with issues, such as war guilt (*Kriegsschuld*), the peace treaties, personal narratives of the war or similar subjects⁴⁹. Just a few of these texts were written by Austrian authors; and not only were they authoring relatively less pieces on these issues, they were also having a specific take on the topics when they wrote about it.

42 I. Hueck, « The Discipline of the History of International Law – New Trends and Methods on the History of International Law », *Journal of the History of International Law*, 3, 2001, p. 194-217 (205).

43 W. Hummer, « Die österreichische Völkerrechtslehre und ihre Vertreter », *Paradigmenwechsel im Völkerrecht zur Jahrtausendwende. Ansichten österreichischer Völkerrechtler zu aktuellen Problemlagen*, ed. by W. Hummer, Wien, Manz, 2002, p. 354-431.

44 *Ibid.*, p. 367.

45 For a short curriculum vitae and bibliography of his works, see R. A. Métall, « Leo Strisower », *Zeitschrift für öffentliches Recht*, 11, 1931, p. I-II.

46 I. Zeman, « Die völkerrechtliche Tätigkeit von Leo Strisower und sein Einfluss auf Hans Kelsen, Alfred Verdross und Hersch Lauterpacht », *Zeitschrift für öffentliches Recht*, 73, 2018, p. 373-396.

47 This was not the only controversy, Kelsen's work raised in Vienna, see e.g. T. Olechowski, « Rechtsphilosophie gegen Rechtsgeschichte? Ein Juristenstreit aus der Zwischenkriegszeit an der Wiener Rechtsfakultät », *Hans Kelsen in seiner Zeit*, ed. by C. Jabloner, T. Olechowski, K. Zeleny, Wien, Manz, 2019, p. 109-126.

48 For an overview of the development of international law in Germany, see I. Hueck, « The Discipline of the History of International Law – New Trends and Methods on the History of International Law », *Journal of the History of International Law*, 3, 2001, p. 194-217. For a contemporary overview, see M. Liepmann, *Die Pflege des Völkerrechts an den deutschen Universitäten*, Berlin, Verlag Hans Robert Engelmann, 1919.

49 « Literaturberichte. Literatur zum Weltkrieg », *Niemeyers Zeitschrift für Internationales Recht*, 28, 1920, p. 564-571.

22. The success of the *rapprochement* for the Austrian academia in international law was partially initiated by Strisower's publications after the war. His primary work was *Der Krieg und die Völkerrechtsordnung* (The war and the international legal order) from 1919⁵⁰. This book was characteristic for a whole range of publications on international law in Austria after the war. The topics were delicate, controversial and the scholars tried to refrain from harsh national political sentiments in their texts.

23. Strisower's approach in his analysis of the legal phenomenon of war in the international legal order already echoed thoughts of legal positivism and the pure theory of law for which his disciple Hans Kelsen earned his reputation⁵¹. Strisower rigorously separated the legal sphere and the legal questions from the ethical, political or any other kind of influence that affected the legal assessment. Although Strisower distinguished the wars to pursue international legal rights and claims from the defensive wars, and the wars for the purpose of other « vital » reasons of the state, he emphasized that the laws of war were valid without any reference to the question whether such a war was just or not⁵². In his observations of World War I, Strisower criticized that the discourses, whether the war should be considered as just or unjust, were lead more intensively than the discourses about its legality. Consequently, alleged ethical reasons were frequently invoked to justify the war in the public⁵³.

24. A second aspect of Strisower's book took up Lammasch's thoughts on international coercive measures, namely the intervention⁵⁴. Although Strisower acknowledged that the term « intervention » was in the first place of political meaning, he perceived of the question how far international law needs to allow interventions as particularly important for the post-War international legal order⁵⁵. Especially, collective security considerations of the entirety of states (*Staatengesamtheit*) should allow for interventions and Strisower propagated such a redesign of the international legal order⁵⁶.

25. When Strisower published his book in the year 1919, his student Alfred Verdross also completed and published his doctoral thesis under Strisower's supervision : *Die völkerrechtswidrige Kriegshandlung und der Strafanspruch der Staaten* (The illegal conduct of war in international law and its prosecution by states). This topic grew out of his practical experiences during the war in Austria's Supreme Military Court (*k. u. k. Oberster Militärgerichtshof*)⁵⁷. Although Verdross dealt with a current practical issue of international law, he emphasized the broader theoretical aspects and implications of the topic.

26. The central theme in Verdross's book is the question which state might punish soldiers (regular combatants) for their breaches of the laws of war⁵⁸. The Paris Peace Treaties included in Art. 228 Treaty of Versailles for Germany and in Art. 173 Treaty of St. Germain for Austria provisions to punish or extradite persons, who were guilty of breaking the laws or customs of war⁵⁹. Verdross downplayed that the current relevance of the topic was driving his analysis. He argued that according to general international law states were obliged to hold persons accountable that harmed the enemy in ways constituting a breach of the laws of war ; but criminal liability is not necessarily indicated by that⁶⁰. The more controversial question was, if the state that was harmed might also prosecute persons that violated its rights under the laws of war⁶¹. The

50 L. Strisower, *Der Krieg und die Völkerrechtsordnung*, Wien, Manz, 1919.

51 R. A. Métall, « Leo Strisower », *Zeitschrift für öffentliches Recht*, II, 1931, p. I-II.

52 L. Strisower, *Der Krieg und die Völkerrechtsordnung*, Wien, Manz, 1919, p. 3.

53 *Ibid.*, p. 26.

54 *Ibid.*, p. 108 ; Strisower treated this topic also later in his contribution L. Strisower, « Intervention », *Wörterbuch des Völkerrechts und der Diplomatie*, vol. 1, ed. by K. Strupp, Berlin, Leipzig, Walter de Gruyter & Co., 1924, p. 581-591.

55 L. Strisower, *Der Krieg und die Völkerrechtsordnung*, Wien, Manz, 1919, p. 115.

56 *Ibid.*, p. 123.

57 I. Seidl-Hohenveldern, « Alfred Verdross. Biographical Note with Bibliography », *European Journal of International Law*, 6, 1995, p. 103-115 (103).

58 A. Verdross, *Die völkerrechtswidrige Kriegshandlung und der Strafanspruch der Staaten*, Berlin, Verlag Hans Robert Engelmann, 1920, p. 16.

59 *Ibid.*, p. 84-87.

60 *Ibid.*, p. 20-21.

61 *Ibid.*, p. 21-25.

main point for Verdross was that general international law applied with regard to war criminals and that the provisions of the peace treaties need to be interpreted in this light⁶².

27. The theoretical core of Verdross's book, however, formed a speculative excursus about the relation between state law and international law⁶³. Verdross concluded : « International law is the basis of state law. International law and state law evolve by being derived from a common original norm as a unitary legal system, despite the existence of contradictions »⁶⁴. Verdross thereby fitted the treatment of this particular legal topic neatly into his more general theoretical approach to international law. If general international law mandates the home state of the perpetrator to prosecute the breaches of international law, state law should not delegate this duty to another state.

28. Another student of Strisower who actively published on questions of international law and World War I was Josef Laurenz Kunz⁶⁵. Having served on the front, the war was a recurring topic in his studies. Most controversially, he addressed the infringement of Belgian neutrality, one of the most disputed topics of the laws of war in the First World War⁶⁶. Kunz was clear about the injustice of the act when the German Empire had breached the neutrality of Belgium. In his study, Kunz discussed the historical genesis of the Belgian state, its neutral status and the illegality of the German Empire's state of emergence (*Notstand*) justification. In the same year, Kunz compiled a bibliography about the literature on the World War from different countries that consisted of over 100 pages⁶⁷. The purpose of this collection was not just to gather the most important works for academic studies, but particularly to include foreign literature, which was too often left out of such bibliographies⁶⁸.

29. Although Kunz received critique for his treatment of the war, he persisted in his writings and authored even in the famous German *Wörterbuch des Völkerrechts* (Encyclopedia of international law) the entry on Germany's infringement of the Belgian neutrality in 1924. He also concluded in this format that this act was illegal and could not be legitimized⁶⁹. In addition, Kunz considered the German devastations on French territory upon their withdrawal illegal under international law⁷⁰. As one of the few international lawyers, Kunz was also commenting on the toxic gas war on the Western Front at the end of the 1920 s⁷¹. All this made Kunz the most active and engaged international legal commentator on the laws of war in Austria.

30. In general, the literature on the laws of war in World War I was, although being partly apologetic, mainly intended to find a common ground with the international lawyers of the allied powers and communicate legal standpoints in an understandable way. Therefore, emphasizing the strictly legal nature of the analysis was one strategy to navigate between writing for an international and national audience at

62 *Ibid.*, p. 87-93.

63 *Ibid.*, p. 34-44.

64 *Ibid.*, p. 43 (Translation by the author).

65 For a recent intellectual biography, see J. Kammerhofer, « Josef Laurenz Kunz (1890-1970) », *Der Kreis um Hans Kelsen. Die Anfangsjahre der Reinen Rechtslehre*, ed. by R. Walter, C. Jabloner, K. Zeleny, Wien, Manz, 2008, p. 243-259.

66 J. L. Kunz, *Das Problem von der Verletzung der belgischen Neutralität*, Wien, Manz, 1920. For an overview over the whole discourse, see I. V. Hull, *A Scrap of Paper. Breaking and Making International Law during the Great War*, Cornell, Cornell University Press 2014, p. 16-50.

67 J. L. Kunz, *Bibliographie der Kriegsliteratur*, Berlin, Hans Robert Engelmann Verlag, 1920.

68 *Ibid.*, p. 5-6 ; see also C. Wampach, « Der Rechtsstreit um die Verletzung der belgischen Neutralität im Ersten Weltkrieg », *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Germanistische Abteilung*, 133/1, 2016, p. 404-439.

69 J. L. Kunz, « Belgien », *Wörterbuch des Völkerrechts und der Diplomatie*, vol. 1, ed. by K. Strupp, Berlin, Leipzig, Walter de Gruyter & Co., 1924, p. 119-125.

70 J. L. Kunz, « Demarkation von Gebieten », *Wörterbuch des Völkerrechts und der Diplomatie*, vol. 1, ed. by K. Strupp, Berlin, Leipzig, Walter de Gruyter & Co., 1924, p. 240-242.

71 J. L. Kunz, *Gaskrieg und Völkerrecht*, Wien, Verlag von Julius Springer, 1927. For a complete account about the legal debates on the gas war, see M. Vec, « Challenging the Laws of War by Technology, Blazing Nationalism and Militarism : Debating Chemical Warfare Before and After Ypres, 1899-1925 », *One Hundred Years of Chemical Warfare : Research, Deployment, Consequences*, ed. by B. Friedrich, D. Hoffmann, J. Renn, F. Schmaltz, M. Wolf, Heidelberg, Springer Verlag, 2017, p. 105-134.

the same time. It already becomes clear at this point that the legal positivism of the Vienna School was also a political strategy of diplomatic communication. This was also the case in questions of monetary damages and reparations – a more contested topic than the laws of war in Austrian international legal scholarship.

2. Monetary Damages and Reparations

31. The war and its end raised many questions about the economic future of the new states, which were discussed by the Austrian international lawyers mostly under the title of reparations. This was an important issue after the war, as the Peace Treaty of St. Germain regulated in detail the consequences for public and private foreign assets in Austria as well as Austrian assets abroad, but still granted extensive deference to institutions, such as the reparation commission⁷². These debates about those institutions were in the Austrian international legal literature a venue for more political criticism of the peace accords. A characteristic and polemic example for such an approach provided Josef L. Kunz in his article about the implementation of the Treaty of St. Germain, where he began his text by characterizing the treaty as born out of incompetence and maleficence⁷³. Other authors were likewise expressing their political opinions and discontent on these issues more openly as with other topics. Particularly, the critique of the Paris Peace Treaties by internationally renowned figures, such as John Maynard Keynes, helped to establish a connection to an existing international discourse. He saw in these accords the roots for a coming economic disaster⁷⁴.

32. Already during the early years of the war, Leo Strisower dealt with the problem of Austrian assets abroad⁷⁵. He considered the fate of contractual obligations between private persons in now hostile states and the conflict of laws⁷⁶. Consistent with his later writings, the problem whether the empire should retaliate against its enemies was for Strisower a political and not a legal questions⁷⁷. After the war, the reparation commission was the central institution analyzed by Strisower. He did not hold back with criticism when he wrote that the commission was basically an organ of the allied powers without participation of the middle powers⁷⁸. He criticized the « aristocratic » composition of the commission and admonished the members to keep an eye on the duties that Austria had to fulfill against its own citizens⁷⁹. This text was the most polemical account by Strisower on the post-war system.

33. For the documentation of the claims, damages and reparations after the war, an own journal was founded in Austria. It had the telling title *Friedensrecht* (Peace Law) and recorded the implementation of the provisions laid down in Art. 248 and subsequent of the St. Germain Peace Treaty⁸⁰. The main institution to administer these different claims was the Clearing Office (*Abrechnungsamt*)⁸¹. An important international lawyer for the new Austrian republic in the context of these financial issues was Rudolf Blühdorn. He received his habilitation for international law in 1934 with authoring a traditional textbook

72 For an overview, see e.g. L. Rathmanner, « Die Reparationskommission nach dem Staatsvertrag von St. Germain », *Beiträge zur Rechtsgeschichte Österreichs*, 6/1, 2016, p. 74-98; for the new developments in dispute settlement mechanisms following the Paris Peace Treaties, see M. Erpelding, B. Hess, H. Ruiz Fabri, ed., *Peace Through Law. The Versailles Peace Treaty and Dispute Settlement After World War I*, Baden-Baden, Nomos, 2019.

73 J. L. Kunz, « Die Durchführung des Friedensvertrages von St. Germain in Österreich », *Niemeyers Zeitschrift für Internationales Recht*, 30, 31, 1923, p. 117-145, p. 40-53 (117).

74 J. M. Keynes, *The Economic Consequences of the Peace*, London, MacMillan and Co., 1919, p. 226.

75 See e.g. L. Strisower, *Die vermögensrechtlichen Maßregeln gegen Österreicher in den feindlichen Staaten. Ihre internationalrechtliche Wirkung und Zurückweisung*, Wien, Manz, 1915.

76 *Ibid.*, p. 6, 20.

77 *Ibid.*, p. 33-34.

78 L. Strisower, *Die Reparationskommission im Verhältnis zu Österreich*, Wien, Leipzig, Franz Deuticke, 1921, p. 257.

79 *Ibid.*, p. 296.

80 The journal *Friedensrecht: Nachrichtenblatt über die Durchführung des Friedensvertrages und die Verlautbarungen des Österreichischen Abrechnungsamtes* was published from 1921 until 1930.

81 R. Pils, « Art. 248-257 », *Der Vertrag von St. Germain (Manzschers Großkommentar)*, ed. by H. Kalb, T. Olechowski, A. Ziegerhofer, Wien, Manz, 2020 (forthcoming). For a contemporary overview, see e.g. R. Schüller, « Wirtschaftliche Bestimmungen der Friedensverträge von Saint Germain », *Zeitschrift für Volkswirtschaft und Sozialpolitik*, 1, 1921, p. 34-43.

of international law⁸². Before beginning his academic career at the University of Vienna, he had served in the ministry of finance since 1921⁸³. Blühdorn represented as civil servant Austrian interests against allied pecuniary claims. It was also out of this function that Blühdorn compiled a collection of decisions of the mixed arbitral tribunals created following the peace conference⁸⁴.

34. The approach chosen by Josef L. Kunz was less technical when he wrote an overview over the implementation of the Austrian peace treaty for the leading German journal for international law⁸⁵. Although his text treated the St. Germain agreement on a broader scale, the financial and economic provisions formed the center of the article. Due to the bad economic situation, Kunz advocated for legally annulling all reparation claims, instead of just suspending them until Austria's economic situation improves⁸⁶. In a similar tone, Verdross criticized considerations to confiscate property in times of peace and found these provisions in the peace treaties in breach with the norms of customary international law⁸⁷.

35. Despite all these contributions in legal journals, economic topics were hardly treated by international lawyers in those times. It were mostly Austrian bankers or public officers in financial institutions with legal training, such as Richard Kerschagl⁸⁸, Josef Schenk⁸⁹ and others, who discussed the monetary situation, debts and reparations in their works. It was also the place where economists brought in their special expertise and became valuable experts. Legal expertise focused in the meantime on different issues and left this ground open for other disciplines⁹⁰.

3. The Paris Peace System and the (Re)building of the Austrian State

36. Rather than analyzing about the international legal economic order or discussing potential actions for economic relief, international lawyers were more concerned with the new peace system in general and the political rebuilding of the state. This was the place that was chosen for expressing political opinions in form of legal analyses. For example, Alfred Verdross followed a political agenda when he advocated for Austria joining into a Greater Germany in 1919⁹¹. Josef L. Kunz expressed his sympathy for the U.S. during the Paris Peace Conference in his book about Wilson and Clemenceau⁹². In this treatise, Kunz analyzed how the pacifist attitude of Wilson developed over time and how it occurred that Wilson's politics failed at the peace negotiations in Paris. Kunz also traced the foundation of the League of Nations in different texts⁹³ and commented on the League's Council, which he saw as a legal enshrinement of power politics into international law⁹⁴.

82 R. Blühdorn, *Einführung in das angewandte Völkerrecht. Eine Untersuchung über die Bedeutung des Rechtes für die Regelung der zwischenstaatlichen Beziehungen*, Wien, Verlag von Julius Springer, 1934.

83 T. Olechowski, T. Ehs, K. Staudigl-Ciechowicz, *Die Wiener Rechts- und Staatswissenschaftliche Fakultät 1918-1938*, Göttingen, University of Vienna Press, 2014, p. 542.

84 R. Blühdorn, *Die Rechtsätze der gemischten Schiedsgerichte*, Wien, Verband der österreichischen Banken und Bankiers, 1923.

85 J. L. Kunz, « Die Durchführung des Friedensvertrages von St. Germain in Österreich », *Niemeyers Zeitschrift für Internationales Recht*, 30, 31, 1923, p. 117-145, p. 40-53.

86 *Ibid.*, p. 132.

87 A. Verdross, « Zur Konfiskation ausländischen Privateigentums nach Friedensvölkerrecht », *Zeitschrift für öffentliches Recht*, 4, 1925, p. 321-334.

88 See e.g. R. Kerschagl, « Die Währungssysteme in den Nachfolgestaaten der Österreich-Ungarischen Monarchie », *Zeitschrift für die gesamte Staatswissenschaft*, 78, 3/4, 1924, p. 745-778.

89 See e.g. J. Schenk, *Der wirtschaftliche Vernichtungsfriede von St. Germain*, Wien, Alfred Hölder, 1919.

90 This topic will be further discussed in the light of the third argument that there existed a division of labor between international lawyers and economists in chapter III.

91 A. Verdroß, *Deutsch-Österreich in Groß-Deutschland*, Stuttgart, Berlin, Deutsche Verlags-Anstalt, 1919.

92 J. L. Kunz, *Wilson und Clemenceau*, Wien, Leipzig, Manz, 1919.

93 J. L. Kunz, « Die Entstehungsgeschichte des Völkerbund-Paktes », *Zeitschrift für öffentliches Recht*, 4, 1925, p. 223-271.

94 J. L. Kunz, « Konzert, europäisches », *Wörterbuch des Völkerrechts und der Diplomatie*, vol. 1, ed. by K. Strupp, Berlin, Leipzig, Walter de Gruyter & Co., 1924, p. 697-701.

37. The Viennese law professor Alexander Hold-Ferneck was more radical and nationalist in formulating his political opinion and backing it with legal arguments. He even questioned the legally obliging character of the Paris Peace Treaties⁹⁵. Due to the content of the armistice and the pre-contract between Germany and the allied powers, Hold-Ferneck concluded that those provisions deviating from these agreements were not binding under international law for Germany. This kind of studies, however, came rarely from Austrian international lawyers shortly after the signing of the Treaty of St. Germain and Versailles⁹⁶. Hold-Ferneck expressed his nationalist sentiments – as many German legal scholars also did – with an objection of the peace treaties and the League of Nations⁹⁷.

38. Franz Klein, who was minister of justice in the Habsburg Empire and a famous private law scholar, formulated a position towards the peace treaties that was probably most representative for Austrian intellectual life. Although he was not an international law scholar, Klein wrote the entries *St. Germain-Friede* and *Österreich-Ungarn* for the German *Wörterbuch des Völkerrechts*. His emphasis was on the irregularity of the peace treaties with general international law: « The international law of the peace treaties is not backed by a shared legal understanding, but only by the will and interests of the victors »⁹⁸. Moreover, Klein bemoaned the economic condition and hardships of Austria caused by the peace treaty⁹⁹. However, despite this negative assessment, Klein never doubted the legal character of the Treaty of St. Germain.

39. There existed also a trend to study specific questions of the new order evolving after the peace conferences. This included works about the international labor organization¹⁰⁰, private international law studies that aimed for a global legal order¹⁰¹, but also treatises dealing with the topic of minority and nationality rights¹⁰². Josef L. Kunz chose to write his habilitation thesis about the minority rights in the peace treaties¹⁰³. There was a growing international legal literature on national and minority rights. Rudolf Laun, an Austrian-German law professor who grew up in Prague, studied in Vienna and then became professor in Hamburg, was particularly active on this field¹⁰⁴. In his studies, he frequently wrote about the characteristics and legal personality of minorities¹⁰⁵. A recurring issue of the time that already reached back to the imperial times¹⁰⁶. By the end of the 1920 s and the beginning of the 1930 s, this topic became more and more popular, particularly among revisionist and nationalist authors. However, in the beginning of the 1920 s, national minority rights were also an important connection point with the Vienna School of international law that tried to find a new fundament for a modern global legal order. The next chapter

95 A. Hold-Ferneck, « Zur Frage der Rechtsverbindlichkeit des Friedensvertrags von Versailles », *Niemeyers Zeitschrift für Internationales Recht*, 30, 1923, p. 110-117.

96 For a study on the development in the literature on the peace treaties during the interwar era, see B. Davy, U. Davy, « Haltung in finsternen Zeiten. Die Zeitschrift für öffentliches Recht zwischen 1933 und 1945 », *Zeitschrift für öffentliches Recht*, 69, 2014, p. 715-804.

97 H. Kleinschmidt, *Geschichte des Völkerrechts in Krieg und Frieden*, Tübingen, Francke Verlag, 2013, p. 425 (on Austrian and German views).

98 F. Klein, « Österreich-Ungarn », *Wörterbuch des Völkerrechts und der Diplomatie*, vol. 2, ed. by K. Strupp, Berlin, Leipzig, Walter de Gruyter & Co., 1925, p. 204-209 (208): « Das Völkerrecht der Friedensverträge kann sich nicht auf das allgemeine Rechtsbewußtsein, sondern nur auf den Willen und die Interessen der Sieger stützen. »

99 F. Klein, « St. Germain-Friede », *Wörterbuch des Völkerrechts und der Diplomatie*, vol. 2, ed. by K. Strupp, Berlin, Leipzig, Walter de Gruyter & Co., 1925, p. 434-439.

100 J. L. Kunz, « Das internationale Arbeitsrecht der Pariser Friedensverträge und seine Entwicklung », *Zeitschrift für öffentliches Recht*, 2, 1921, p. 39-69.

101 H. Sperl, « Eine internationale Zuständigkeitsordnung in bürgerlichen Rechtssachen », *Niemeyers Zeitschrift für Internationales Recht*, 35, 1925/1926, p. 1-18.

102 N. Berman, « ‚But the Alternative Is Despair‘: European Nationalism and the Modernist Renewal of International Law », *Harvard Law Review*, 106/8, 1993, p. 1792-1903.

103 J. L. Kunz, *Die völkerrechtliche Option*, vol. 1, Breslau, Ferdinand Hirt, 1925.

104 For a recent biography, see R. Biskup, *Rudolf Laun (1882-1975). Staatsrechtler zwischen Republik und Diktatur*, Hamburg, Conference Point Verlag, 2010.

105 See e.g. R. Laun, « Die Volkszugehörigkeit und die völkerrechtliche Vertretung der nationalen Minderheiten », *Niemeyers Zeitschrift für Internationales Recht*, 31, 1923, p. 252-282.

106 N. Wheatley, « Making Nations into Legal Persons Between Imperial and International Law: Scenes from a Central European History of Group Rights », *Duke Journal of Comparative & International Law*, 28, 2018, p. 481-494.

situates these efforts in the broader context of Austria's imperial past and the experienced crisis after the war.

II. The Vienna School's International Legal Positivism as Heir of Austria-Hungarian Constitutionalism

40. During the First World War, the Austrian Journal for Public Law¹⁰⁷ invited leading law professors across the Habsburg Monarchy to participate in a survey about the future structure of the empire¹⁰⁸. The solution for the problem of the different nationalities within the empire and their constitutional legal status was one of the main concerns formulated in the call issued in 1916¹⁰⁹. The journal received answers and essays from 14 law professors. Despite various overlaps and commonalities, all of them discussed the potential structure and legal architecture of the Austrian part of the Austria-Hungarian empire in an own way¹¹⁰. Stanislaus Dnistriański, professor in Lemberg, argued that the map of the empire needs to be redrawn according to the population of the peoples and a central state should be maintained¹¹¹. A similar suggestion came from Hans von Frisch, who held a chair in Czernowitz.

41. Rudolf Laun, professor in Vienna at that time, advocated a federal solution taking into account that all nationalities of the monarchy arrived on the same high standard of civilization and political organization. Therefore, they need to be represented equally based on their personal status and nationality and not according to the territory they inhabit¹¹². For Hans Rauchberg (Prague), the ongoing war showed that it was time to act and that « state necessity proves all historic claims and theoretical doctrines wrong »¹¹³. Others, such as Karl Lamp from Innsbruck were even questioning more broadly the relation to Hungary, Poland, Bosnia and the other nationalities in general¹¹⁴.

42. In short, problems of international and multinational scale were discussed under the premises of constitutional law. But international law was also explicitly invoked to construct a successor of the

107 The Österreichische Zeitschrift für öffentliches Recht was founded and edited by Hans Kelsen until he was forced to hand it completely over to Alfred Verdross for antisemitic reasons in 1934, see B. Davy, U. Davy, « Haltung in finsternen Zeiten. Die Zeitschrift für öffentliches Recht zwischen 1933 und 1945 », *Zeitschrift für öffentliches Recht*, 69, 2014, p. 715-804 (727).

108 N. N., « Die Stellung der Kronländer im Gefüge der österreichischen Verfassung. Eine Rundfrage », *Österreichische Zeitschrift für öffentliches Recht*, Sonderheft : Länderautonomie, 1916, p. 1-2.

109 The main foundation for the constitutional order of the Austria-Hungarian Empire was the Compromise (also called Settlement) between the Austrian and Hungarian part of the Habsburg Empire in 1867. Based on the Compromise, several constitutional laws were enacted for each of the two parts of the empire. This led not just to a complex legal construct between Austria and Hungary, additionally, the representation and relation of the different nations within the Austrian and Hungarian part became also a constitutional question. This entangled structure forced the constitutional law scholars of the time to create a special awareness for different legal orders and their coordination, hierarchy and nationalities. This stood in contrast to constitutional traditions in other European states that conceived themselves as being a single nation state. However, the particular constitutional thinking of the legal scholars in Austria-Hungary also influenced the theoretical works of the main Austrian international legal thinkers after the Great War and spurred a vibrant academic dialogue during the interbellum. For a detailed analysis, see e.g. P. M. Judson, *The Habsburg Empire. A New History*, Cambridge (Massachusetts), London, The Belknap Press of Harvard University Press, 2016, p. 259-268.

110 For an overview, see H. Rauchberg, « Die Rundfrage über die ‚Länderautonomie‘ », *Zeitschrift für öffentliches Recht*, 3, 1917, p. 282-307.

111 S. Dnistriański, « Die Stellung der Kronländer im Gefüge der österreichischen Verfassung », *Österreichische Zeitschrift für öffentliches Recht*, Sonderheft : Länderautonomie, 1916, p. 19-29 (25).

112 R. Laun, « Die Stellung der Kronländer im Gefüge der österreichischen Verfassung », *Österreichische Zeitschrift für öffentliches Recht*, Sonderheft : Länderautonomie, 1916, p. 78-94 (80).

113 H. Rauchberg, « Die Stellung der Kronländer im Gefüge der österreichischen Verfassung », *Österreichische Zeitschrift für öffentliches Recht*, Sonderheft : Länderautonomie, 1916, p. 128-150 (131).

114 K. Lamp, « Die Stellung der Kronländer im Gefüge der österreichischen Verfassung », *Österreichische Zeitschrift für öffentliches Recht*, Sonderheft : Länderautonomie, 1916, p. 51.

Habsburg Empire¹¹⁵. The stakes were high as the continued existence of the monarchy was at issue and most of the lawyers and law professors in Austria were witnessing the last years, months and days of the multinational empire from close distance¹¹⁶. This chapter tries to understand how these hopes and concerns at the end of the Habsburg Empire transformed and manifested in the debates about international law after the war. The constitutional discussions shaped the argumentative tools later applied to the international level.

A. The Constitutional Legal Foundations of International Legal Positivism

43. New theories of international law emerged, and the field of international relations was founded after World War I. The Austrian republic was a center of these evolutions and legal positivism was a part of this new movement in international law¹¹⁷. Particularly, the international legal scholarship of the Vienna School sought a new way to theorize the state and the global legal order¹¹⁸. These efforts already went back to the time before the First World War and particularly to Hans Kelsen's legal theory and constitutional analysis¹¹⁹. A constitutional piece that shows the specific innovative constitutional thinking of Kelsen and his circle can be found in his study about *Reichsgesetz und Landesgesetz* published in the German journal *Archiv des öffentlichen Rechts* in 1914¹²⁰. Although this text is not about international law in a strict sense, it is about the interaction of different legal orders within the Habsburg Empire.

44. Kelsen examined in this paper how conflicts between imperial laws and regional laws were to be resolved and how their legal orders relate to each other. His point of departure was to acknowledge the equality of these two normative systems. In essence, this assumption led Kelsen to consider the *lex posterior* rule and the possibility, whether the empire or the region might derogate laws of the respective other legislator through their own norms¹²¹. The consequence of this thesis brought Kelsen to the question if there was just a single imperial legal order or if multiple legal orders existed within the empire; an assumption with broader implications for the legal nature of the Habsburg Monarchy¹²². In his portrayal of Kelsen, Koskenniemi points out that the interwar time and the decay of the Austria-Hungarian Empire spurred Kelsen's abstract analysis of law, this piece and also Kelsen's *Hauptprobleme der Staatsrechtslehre* illustrate that Kelsen developed his genuinely positivist approach, which he also applied to international law, already earlier¹²³.

45. The question how different legal layers fit together to form a whole system occupied Kelsen's consideration of federalism, but also of international law. This also explains why Kelsen carefully treated the relation between the states and the union in a federal constitutional state in his first main study on

115 So did for example Hans Kelsen in a draft to the government. See R. A. Métall, *Hans Kelsen. Leben und Werk*, Wien, Franz Deuticke, 1969, p. 21-22.

116 For a well-researched overview of the international law professors in Austria, see e.g. W. Hummer, « Die österreichische Völkerrechtslehre und ihre Vertreter », *Paradigmenwechsel im Völkerrecht zur Jahrtausendwende. Ansichten österreichischer Völkerrechtler zu aktuellen Problemlagen*, ed. by W. Hummer, Wien, Manz, 2002, p. 354-431; W. M. Plöchl, « Zur Entwicklung der modernen Völkerrechtswissenschaft an der Wiener Juristenfakultät », *Völkerrecht und rechtliches Weltbild. Festschrift für Alfred Verdross*, ed. by F. A. Heydte, I. Seidl-Hohenveldern, S. Verosta, K. Zemanek, Wien, Springer, 1960, p. 31-53.

117 J. v. Bernstorff, *The Public International Law Theory of Hans Kelsen. Believing in Universal Law*, Cambridge, Cambridge University Press, 2010, p. 5-6.

118 For a brief and general introduction into the Vienna School, see M. Stolleis, *Geschichte des öffentlichen Rechts in Deutschland*, vol. 3, München, C.H. Beck, 1999, p. 163-171.

119 For a contextualization of Kelsen's work, see C. Jabloner, « Kelsen and His Circle: The Viennese Years », *European Journal of International Law*, 9, 1998, p. 368-385.

120 H. Kelsen, « Reichsgesetz und Landesgesetz nach österreichischer Verfassung », *Hans Kelsen Werke*, vol. 3, ed. by M. Jestaedt, Tübingen, Mohr Siebeck, 2010, p. 359-425.

121 *Ibid.*, p. 392.

122 *Ibid.*, p. 398.

123 M. Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870-1960*, Cambridge, Cambridge University Press, 2001, p. 243.

international law titled *Das Problem der Souveränität und die Theorie des Völkerrechts* (The sovereignty problem and the theory of international law)¹²⁴. It becomes clear in this book that the way Kelsen approached the Austria-Hungarian imperial legal order informed his treatment of international law. His theoretical effort to integrate diverse legal orders under one legal system resembled his thoughts about the co-existence, co-ordination and integration of the imperial legal order. The core of this idea goes back to the fact that Kelsen did not consider the state as the sovereign, but the law and the legal order. He spelled this out explicitly in 1920¹²⁵. From this starting point, the problem of the relation between international law and state law appeared to be quite similar as the conflicts between imperial and regional legal systems.

46. Kelsen's faith in the proper functioning of the normative system was also resembled in his assessment of the often invoked « nationality problem » within the Habsburg Empire. As already the survey of the Austrian Journal of Public Law indicated, this question was at the core of the constitutional reform and debates during the war and the peace negotiations¹²⁶. It is therefore not surprising that legal scholars in Austria devoted several legal analysis to this topic. An influential study on the status of the empire's nationalities was *Zur Nationalitätenfrage* (On the nationality question) by Rudolf Laun¹²⁷. Laun submitted his text as an expert opinion about the Austrian laws regarding the treatment of nationalities on behalf of the Dutch peace movement « Zentralorganisation für einen dauernden Frieden ». Another version of the article later appeared in the Austrian Journal of Public Law¹²⁸. Laun's generally positive reception of the legal framework in the Habsburg Empire was shared by a whole group of scholars in Austria, among them Heinrich Lammasch¹²⁹ and Hans Kelsen¹³⁰. In his review of Laun's work, Kelsen likewise acknowledged the imperial constitution as fit for managing the national differences under a common empire¹³¹. Kelsen also applied this logic on the relation of different states and their legal orders under the common legal framework of international law.

47. The consequence was a new constitutionalist approach to international law¹³². However, the Vienna School did not consist only of Hans Kelsen, nor was he the first one to write about international legal positivism. A group of other mainly Austrian international lawyers were debating these topics in international legal scholarship¹³³. The subsequent chapter aims to provide a short overview over the most eminent members of the Vienna School that captures the differences in their approaches and ideas.

B. The Political Project of International Legal Positivism

48. To speak of one homogenous Vienna School of international legal positivism is erratic. There has rather been a discourse community that debated in a similar language and with cross references to each

124 H. Kelsen, *Das Problem der Souveränität und die Theorie des Völkerrechts. Beitrag zu einer Reinen Rechtslehre*. Tübingen : J.C.B. Mohr (Paul Siebeck), 1920, p. 59.

125 *Ibid.*, p. 16.

126 For an overview over the constitutional traditions around this time, see D. Grimm, « Verfassung (II.). Konstitution, Grundgesetze », *Geschichtliche Grundbegriffe*, vol. 6, ed. by O. Brunner, W. Conze, R. Koselleck, Stuttgart, Klett-Cotta, 1992, p. 863-899.

127 R. Laun, *Zur Nationalitätenfrage*, Den Haag, Recueil des Rapports, vol. 3, 1917.

128 R. Laun, « Das Nationalitätenrecht als Internationales Problem », *Österreichische Zeitschrift für öffentliches Recht*, 3, 1918, p. 397-418.

129 H. Lammasch, « Eine internationale Anerkennung des österreichischen Nationalitätenrechts », *Die Zeit*, 10 June 1917.

130 H. Kelsen, « Review of Rudolf Laun, *Zur Nationalitätenfrage* », *Österreichische Zeitschrift für öffentliches Recht*, 3, 1918, p. 585-586.

131 J. v. Bernstorff, *The Public International Law Theory of Hans Kelsen. Believing in Universal Law*, Cambridge, Cambridge University Press, 2010, p. 52.

132 T. Kleinlein, *Die Konstitutionalisierung im Völkerrecht. Konstruktion und Elemente einer idealistischen Völkerrechtslehre*, Heidelberg, Dordrecht, London, New York, Springer, 2012, p. 160-174 ; A. Somek, « Kelsen Lives », *European Journal of International Law*, 18/3, 2007, p. 409-451.

133 It exists already a whole literature about Hans Kelsen's international legal theory and also studies about various other authors. Therefore, the next chapter will limit itself to the main representatives of the school and those parts of their work which are important for the argument.

other about the same topic : How to construct international law¹³⁴. These lively methodological debates and exchanges of arguments were characteristic for the legal discourse of those years¹³⁵. However, there was also a practical interest in situating the newly founded state in a context that was rather dominated by the international rule of law than by power relations. The initial common consensus that international law should matter soon started to differ and diversify in various opinions¹³⁶. This development was driven by theoretical differences, personal ambitions and political convictions.

49. The scholarly debate was animated by a number of books, journal articles, replications and book reviews written by the members of the school, which document the arguments and contestations at the time. Still in war times, Kelsen's text *Reichsgesetz und Landesgesetz nach österreichischer Verfassung* received a review by one of his disciples ; Alfred Verdross's discussion of Kelsen's essay already revealed the friction points between the two thinkers also in their international legal theory¹³⁷. While Kelsen considered it a political decision not to be taken by lawyers if imperial or regional laws were predominant, Verdross considered the imperial and regional constitutions as capable to resolve such a conflict on a legal basis. Consequently, Verdross, propagated the *lex posterior* rule in interpreting diverging imperial and regional laws. This exemplary controversy about the constitution also resembles their different viewpoints about international law.

50. However, constitutional thinking mattered for both of them. This is already expressed in the titles of their works : Verdross's first important book on international law from the 1920 s included the constitutional framework of the topic explicitly¹³⁸. Likewise, Kelsen emphasized with the notion « sovereignty » in the title of his first international law book the reference to traditions of constitutional law and *Staatsrechtslehre*¹³⁹. The main questions of these studies were how the state and the international legal order relate to each other. After World War I, the need to find a basic legal unity in the antagonistic global situation was felt urgently¹⁴⁰.

51. Verdross already devoted an article to this topic in 1914¹⁴¹, but his arguments about the construction of international law slightly changed over the course of the Great War. Before the war, he advanced the view that international law was not above state law, but its integral component¹⁴². Almost a decade later in 1923, Verdross adapted his theory and concluded that a certain part of international law – he called it the

134 For one of the earliest documents, see Verdross's publication with the telling title A. Verdross, « Zur Konstruktion des Völkerrechts », *Zeitschrift für Völkerrecht*, 8, 1914, p. 329-359.

135 M. Stolleis, *Geschichte des öffentlichen Rechts in Deutschland*, vol. 3, München, C.H. Beck, 1999, p. 155.

136 A good overview of the Vienna School provides R. Walter, C. Jabloner, K. Zeleny, eds., *Der Kreis um Hans Kelsen. Die Anfangsjahre der Reinen Rechtslehre*, Wien, Manz, 2008.

137 A. Verdross, « Review of Franz Weyr, ‚Rahmengesetze‘ and Hans Kelsen ‚Reichsgesetz und Landesgesetz nach österreichischer Verfassung‘ », *Österreichische Zeitschrift für öffentliches Recht*, 2, 1915/1916, p. 384-388.

138 A. Verdross, *Die Einheit des rechtlichen Weltbildes auf Grundlage der Völkerrechtsverfassung*, Tübingen, Mohr Siebeck, 1923, p. V.

139 H. Kelsen, *Das Problem der Souveränität und die Theorie des Völkerrechts. Beitrag zu einer Reinen Rechtslehre*, Tübingen : J.C.B. Mohr (Paul Siebeck), 1920.

140 A. Verdross, *Die Einheit des rechtlichen Weltbildes auf Grundlage der Völkerrechtsverfassung*, Tübingen, Mohr Siebeck, 1923, p. 353.

141 There are many appraising and critical accounts of Alfred Verdross's theory and person, particularly during the time of austrofascism and nationalsocialism. See e.g. A. Carty, « Alfred Verdross and Othmar Spann : German Romantic Nationalism, National Socialism and International Law », *European Journal of International Law*, 6, 1995, p. 78-97 ; O. Rathkolb, « Die Rechts – und Staatswissenschaftliche Fakultät der Universität Wien zwischen Antisemitismus, Deutschnationalismus und Nationalsozialismus 1938, davor und danach », *Willfähige Wissenschaft. Die Universität Wien 1938 bis 1945*, ed. by G. Heiß, S. Mattl, S. Meissl, E. Saurer, K. Stuhlpfarrer, Wien, Verlag für Gesellschaftskritik, 1989, p. 197-232 ; I. Marboe, « Verdross' Völkerrechtstheorie vor dem Hintergrund des Nationalsozialismus », *Vertriebenes Recht – Vertreibendes Recht. Zur Geschichte der Wiener Rechts – und Staatswissenschaftlichen Fakultät zwischen 1938 und 1945*, ed. by F.-S. Meissel, T. Olechowski, I. Reiter-Zatloukal, S. Schima, Wien, Manz, 2012, p. 171-194 ; B. Simma, « The Contribution of Alfred Verdross to the Theory of International Law », *European Journal of International Law*, 6, 1995, p. 33-54. This study is just concerned with the subsequent years following the end of World War I and therefore will refrain from formulating an own assessment.

142 A. Verdross, *Die Einheit des rechtlichen Weltbildes auf Grundlage der Völkerrechtsverfassung*, Tübingen, Mohr Siebeck, 1923, p. 353.

Völkerrechtsverfassung (international legal constitution) – was in fact situated above state law. At the same time, the organs of the state were relied upon to set the international legal constitution in motion¹⁴³. Verdross openly targeted with this explanation Kelsen's idea of the relation between state law and international law that he laid down in his monograph. This was also evident for the observers of the time, as Josef L. Kunz noted in his book review of Verdross's work¹⁴⁴.

52. Although Kelsen argued similarly as Verdross that a legal system is a closed complex of norms with a unitary basic norm, the consequences of this model for Kelsen were different. Kelsen thought of himself still standing in the tradition of *Reichsgesetz und Landesgesetz* and even cited his own article to promote this view¹⁴⁵. He concluded similar to his article from 1914 that it was a political choice whether the state or the international legal order enjoy primacy in the legal system¹⁴⁶. This thesis put Kelsen into opposition to most of the other representatives of the Vienna School and the controversy about the primacy of international law should become the most characteristic point and contribution of the Vienna School to the theory of international law¹⁴⁷.

53. This deviance in Kelsen's articulation of the relation between state and international law was not only for Verdross an important reference point in shaping his own theory. Other legal theorists of the time and also beyond Austria developed their thoughts in dialog, discussion or contestation of Kelsen's views. Probably the most radical of his contenders and at the same time Kelsen's disciple was Fritz Sander¹⁴⁸. Sander became a professor in Prague and questioned in an article the legal nature of international law and showed sympathies for the deniers¹⁴⁹ of international law¹⁵⁰. With his own theoretical agenda that he called *Theorie der Rechtserfahrung* (Theory of legal experience), Sander developed a genuine, but also disputed approach to jurisprudence¹⁵¹. Josef L. Kunz characterized Sander's theoretical enterprise in an extensive review article as an attempt to « radically destroy all the previous legal dogmatisms »¹⁵². Regarding international law, Sander aimed to solve all problems of legal theory related to the foundation of international law by deconstructing the meta-juridical assumption that different states existed. He replaced the notion « state », which he considered to be inadequate, with the term « state fragmentation »¹⁵³. Sander's viewpoints can be already traced back to his earliest writings after the Great War¹⁵⁴. However, in Sander's first publication in the *Zeitschrift für öffentliches Recht*, he still affirmed that international law is of a higher rank than state law and by that also inspired Verdross's writings, who cited Sander prominently in the theoretical excursus of his doctoral thesis¹⁵⁵.

143 *Ibid.*, p. 134.

144 J. L. Kunz, « Rezension Alfred Verdross, Die Einheit des rechtlichen Weltbildes auf Grundlage der Völkerrechtsverfassung », *Archiv des öffentlichen Rechts*, 7, 1924, p. 120-125.

145 H. Kelsen, *Das Problem der Souveränität und die Theorie des Völkerrechts. Beitrag zu einer Reinen Rechtslehre*. Tübingen : J.C.B. Mohr (Paul Siebeck), 1920, p. 115.

146 *Ibid.*, p. 314-317.

147 This is also emphasized in J. v. Bernstorff, *The Public International Law Theory of Hans Kelsen. Believing in Universal Law*, Cambridge, Cambridge University Press, 2010, p. 104.

148 A.-J. Korb, *Kelsens Kritiker*, Tübingen, Mohr Siebeck, 2010.

149 For a comprehensive study of the deniers of international, see the thesis project *The Deniers of International Law* by Paul Hahnenkamp (University of Vienna).

150 F. Sander, « Das Wesen der ‚Völkerrecht‘ genannten gesellschaftlichen Gebilde », *Zeitschrift für die gesamte Staatswissenschaft*, 81/1, 1926, p. 80-127.

151 F. Sander, *Staat und Recht. Prolegomena zu einer Theorie der Rechtserfahrung*, 2 vols., Leipzig, Wien, Franz Deuticke, 1922.

152 J. L. Kunz, « Rezension Fritz Sander : Staat und Recht », *Archiv des öffentlichen Rechts*, 5, 1923, p. 249-267.

153 F. Sander, *Staat und Recht. Prolegomena zu einer Theorie der Rechtserfahrung*, vol. 2, Leipzig, Wien, Franz Deuticke, 1922, p. 187; F. Sander, « Das Wesen der ‚Völkerrecht‘ genannten gesellschaftlichen Gebilde », *Zeitschrift für die gesamte Staatswissenschaft*, 81/1, 1926, p. 80-127 (120-127).

154 The drastic turn of Fritz Sander away from Kelsen is documented by his work F. Sander, *Kelsens Rechtslehre. Kampfschrift wider die normative Jurisprudenz*, Tübingen, Mohr Siebeck, 1923.

155 F. Sander, « Das Faktum der Revolution und die Kontinuität der Rechtsordnung », *Zeitschrift für öffentliches Recht*, 1, 1919/1920, p. 132-164 (154).

54. Another prominent and already mentioned member of the Vienna School was Josef L. Kunz. He drafted a synopsis of the Vienna School's contribution to international law after his emigration in the U.S.¹⁵⁶. It was not the first overview published about the Vienna School, but it contributed to spread the theory of the school in the Americas¹⁵⁷. Kunz complimented Verdross for initially applying Kelsen's pure theory of law to international law¹⁵⁸. In a detailed review of Verdross's book on the unity of the juridical world, Kunz recognized this innovative approach on the issue and stated that he completely agreed with Verdross's thoughts¹⁵⁹. One year before, Kunz's own monograph appeared, in which he argued for the primacy of international law against state law¹⁶⁰. However, after he had read Verdross' book the next year, Kunz agreed that just the *Völkerrechtsverfassung* stood above state law.

55. This short sketch of the Vienna School shows several particularities of their *Denkstil*. Although the scientific perspective was often emphasized, the political dimension of the theoretical project was obvious¹⁶¹. For a relatively small state in central Europe that was additionally banned from having an effective military force in the peace treaties, a reliable international legal order was vital. In the eyes of the contemporaries, it was also the best guarantee against the outbreak of a new war. The scholarship of this group also formed a transnational momentum and influenced lawyers around the world¹⁶². At the same time, it was the constitutionalism of the imperial time that shaped the debates even after the decay of the monarchy.

III. Economic Reconstruction : Austria, the League of Nations and International Law

56. The newly founded League of Nations and its interventions into financial, monetary and economic affairs on a global scale played a key role for the global economy¹⁶³. One might think that these legal innovations prompted comments and responses by international lawyers, but these new governance mechanisms were hardly considered in international legal scholarship. A gap that was filled by *Nationalökonomien* (economists). This was the start of a division of labor between the economic and the legal discipline that is still persisting. The beginning can be well observed during the early 1920 s and the discussions around the so-called Geneva Protocols, a rescue package designed to support the struggling economy of the Austrian republic¹⁶⁴.

57. The pure theory of law and legal positivism of the Vienna School also had their share in the rising influence of economic science. Not only the personal connections between the representatives of both

156 J. L. Kunz, « The Vienna School and International Law », *New York University Law Quarterly Review*, II, 1934, p. 370-422.

157 See e.g. B. Akzin, « L'école autrichienne et le fondement du droit des gens », *Revue de Droit International*, 2, 1927, p. 342-372 ; F. Schreier, « Die Wiener rechtsphilosophische Schule », *Logos*, II, 1923, p. 309-328.

158 J. L. Kunz, « The Vienna School and International Law », *New York University Law Quarterly Review*, II, 1934, p. 370-422 (398).

159 J. L. Kunz, « Rezension Alfred Verdross, Die Einheit des rechtlichen Weltbildes auf Grundlage der Völkerrechtsverfassung », *Archiv des öffentlichen Rechts*, 7, 1924, p. 120-125.

160 J. L. Kunz, *Völkerrechtswissenschaft und Reine Rechtslehre*, Leipzig, Wien, Franz Deuticke, 1923, p. 81-83.

161 M. Koskeniemi, *The Gentle Civilizer of Nations : The Rise and Fall of International Law 1870-1960*, Cambridge, Cambridge University Press, 2001, p. 247.

162 For a bibliography of scholarship on Kelsen's international legal theory, see e.g. N. Bersier Ladava, « Hans Kelsen (1881-1973) Biographical Note and Bibliography », *European Journal of International Law*, 9, 1998, p. 391-400.

163 For an illustrative study on the grow, see P. Clavin, *Securing the World Economy. The Reinvention of the League of Nations, 1920-1946*, Oxford, Oxford University Press, 2013.

164 N. Marcus, *Austrian Reconstruction and the Collapse of Global Finance, 1921-1931*, Cambridge (Massachusetts), London, Harvard University Press, 2018.

disciplines¹⁶⁵, but also the distinct separation of the legal science from politics and social sciences postulated by the Vienna School contributed in part to the expanding significance of economics in the general debates. This separation was further institutionalized ; a primary Austrian economic journal, the *Zeitschrift für Volkswirtschaft, Sozialpolitik und Verwaltung*, noted in its first issue after the war that issues of public law will no longer be published in the journal, due to the creation of the Austrian journal of public law¹⁶⁶.

58. On the topic of the Geneva Protocols, economic sciences lead the discourse and consequently also produced a larger amount of literature that dealt with the Geneva Protocols and the League of Nations economic aid for Austria. Although many of the economists at that time also passed legal training, they hardly adopted a legal perspective in their studies. Nevertheless, some legal scholars exceptionally commented on those topics. For example Adolf Merkl, public law professor in Vienna, dedicated several pieces in legal, administrative and economic journals to the restructuring and economic recovery of the Austrian republic¹⁶⁷. He frequently integrated the international perspective and even commented on the nature of the Austrian laws implementing the obligations of the Geneva Protocols in the light of Verdross's and Kelsen's international legal theory¹⁶⁸. Another legal author writing about the economic crisis was Franz Klein, who authored together with Ludwig Mises a book on the economic restructuring and stabilization of the Austrian republic in the times of hyperinflation¹⁶⁹. Klein also described the dire economic condition of Austria in the main German international law encyclopedia¹⁷⁰. Moreover, the Innsbruck based law professor Karl Lamp prepared a draft for establishing a customs union between Germany and Austria to recover the Austrian economy¹⁷¹.

59. The struggle of ideas for economic recovery was the core theme in the works of the Austrian economists¹⁷². A school colleague of Hans Kelsen, whose family also migrated from another part of the Habsburg Empire to Vienna at the end of the 19th century, was the economist Ludwig Mises. Shortly after the end of World War I, Mises assessed the ideological and political reasons for the war and propagated a rational utilitarianism and economic liberalism as security for a lasting peace order. He criticized the double standards of the victorious powers regarding the right to self-determination of Germany and the economic consequences of the war¹⁷³.

60. Not only the Austrian School of Economics, of which Mises was a main representative, but also the discipline of economics in general grew in importance after the war¹⁷⁴. Gustav Stölper, editor of one of the main Austrian economic journals, published an extensive analysis of Austria's national industry and fiscal

165 Hans Kelsen was, for example, the best man at Joseph Schumpeter's wedding. See R. A. Métall, *Hans Kelsen. Leben und Werk*, Wien, Franz Deuticke, 1969, p. 32.

166 E. Plener, R. Reisch, O. Spann, F. Wieser, eds., « Vorbemerkung zur Neuen Folge », *Zeitschrift für Volkswirtschaft und Sozialpolitik*, 1, 1921.

167 See e.g. A. Merkl, « Das Sanierungswerk », *Zeitschrift für Verwaltung*, 55, 1922, p. 19-28 ; *id.*, « Das Verfassungsproblem der Genfer Protokolle », *Der österreichische Volkswirt*, 14, 1922, p. 223-226 ; *id.*, « Der Endtermin der Völkerbundkontrolle », *Der österreichische Volkswirt*, 17, 1925, p. 1041-1043, 1070-1072 ; *id.*, « Der Sanierungsplan des Völkerbundes », *Zeitschrift für Verwaltung*, 55, 1922, p. 48-54 ; *id.*, « Der Stand der Sanierung. Ausgabenminderung und Einnahmenvermehrung », *Zeitschrift für Verwaltung*, 57, 1924, p. 15-22 ; *id.*, « Die Völkerbundkontrolle als Staatsrechtsinstitut », *Zeitschrift für öffentliches Recht*, 3, 1923, p. 599-627.

168 A. Merkl, « Die Völkerbundkontrolle als Staatsrechtsinstitut », *Zeitschrift für öffentliches Recht*, 3, 1923, p. 599-627 (625).

169 F. Klein, « Geldrechtliche Probleme der Stabilisierung », *Die geldtheoretische und geldrechtliche Seite des Sanierungsproblems*, München, Leipzig, Duncker & Humblot, 1923, p. 39-75.

170 F. Klein, « St. Germain-Friede », *Wörterbuch des Völkerrechts und der Diplomatie*, vol. 2, Berlin, Leipzig, Walter de Gruyter & Co., 1925, p. 434-439.

171 K. Lamp, « Der Entwurf einer gemeinsamen Zollordnung für das Deutsche Reich und Deutsch-Oesterreich », *Annalen des Deutschen Reichs für Gesetzgebung, Verwaltung und Volkswirtschaft*, 1919/1920, p. 537-592.

172 Similarly as the legal academia, the discipline of economics and its theoretical approaches were questioned and in transition after World War I. However, this study will not delve further into this topic. For an overview of the intellectual context, see e.g. E. Dekker, *The Viennese Students of Civilisation : The Meaning and Context of Austrian Economics Reconsidered*, Cambridge, Cambridge University Press, 2016 ; P. Silverman, *Law and Economics in Interwar Vienna : Kelsen, Mises, and the Regeneration*, University of Chicago, Ph.D.-Thesis, 1984.

173 L. Mises, *Nation, Staat und Wirtschaft. Beiträge zur Politik und Geschichte der Zeit*, Wien, Leipzig, Manz, 1919.

system that highlighted the current economic problems, but also advanced possible solutions¹⁷⁵. Such survey analyses of the Austrian economy were sometimes also translated in other languages and addressed foreign politicians or scholars¹⁷⁶. The Austrian economic crisis also prompted comparisons with other successor states of the Habsburg Empire¹⁷⁷. Transnational analyses of the post-war situation were also used as points of departure for formulating policy proposals on financial issues. The economic journals were lively venues to debate those subjects. For example, the Viennese and South Tyrolian professors Emanuel Hugo Vogel and Alfred Amonn were arguing in a series of articles, which fiscal policy goals the government should prioritize¹⁷⁸. The economic crisis urged scholars to deliberate over solutions for Austria's severe situation.

61. Moreover, a whole range of specific issue topics was discussed in the literature. The trained lawyer and banker Richard Kerschagl focused in his studies on the subject of the Austrian monetary and banking system and its reform¹⁷⁹. The Austria-Hungarian Bank was still in place in the beginning of the 1920 s; likewise the common currency system between the successor states, which was first thought to be necessary for economic prosperity on the territory of the former Habsburg Empire. Only with the severance of the Austrian economic condition, this opinion changed and new policies, such as the foundation of an own Austrian national bank and a new currency were considered¹⁸⁰.

62. Deeply connected with those developments was the restructuring of Austria under the Geneva Protocols. One of the most authoritative books became the account by Victor Kienböck, who negotiated as minister of finance important parts of the conditions¹⁸¹. Mises deliberated on the reasons for the inflation, the gold standard, considered different positions in the debate and criticized ideological arguments¹⁸². Rudolf Schranil, who also taught at the University of Vienna, focused in his assessment of the economic crisis on the financial situation of the constitutionally autonomous public corporations and institutions, such as the federal states, municipalities and unions¹⁸³. Also German economists and journalists analyzed from distance and sometimes polemicized against the economic restructuring of Austria under the Geneva Protocols. While the German Rudolf Freund called Austria a financial colony that lost its own sovereignty under the economic aid package¹⁸⁴, Arthur Feiler considered the Austrian experience a potential model for Germany¹⁸⁵.

174 For a recent book that traces the influence of economic liberalism on the world order, see Q. Slobodian, *Globalists. The End of Empire and the Birth of Neoliberalism*, Cambridge (Massachusetts), London, Harvard University Press, 2018.

175 G. Stolper, *Deutsch-Österreich als Sozial- und Wirtschaftsproblem*, München, Drei Masken Verlag, 1921. This work was based on his earlier study G. Stolper, *Das Mitteleuropäische Wirtschaftsproblem*, 3. edn., Leipzig, Wien, Franz Deuticke, 1918.

176 See e.g. K. Hudeczek, *The Economic Resources of Austria*, Wien, Manz, 1922.

177 R. Wolkan, « Die Wirtschaftsentwicklung der Nachfolgestaaten im Lichte der Völkerbundstatistik », *Zeitschrift für Volkswirtschaft und Sozialpolitik*, 4, 1924, p. 358-366.

178 E. H. Vogel, « Stabilisierung oder Valutahebung als Ziel der Währungsreform », *Zeitschrift für Volkswirtschaft und Sozialpolitik*, 1, 1921, p. 303-323; A. Amonn, « Das Ziel der Währungspolitik », *Zeitschrift für Volkswirtschaft und Sozialpolitik*, 1, 1921, p. 401-430; E. H. Vogel, « Das Ziel der Währungspolitik », *Zeitschrift für Volkswirtschaft und Sozialpolitik*, 1, 1921, p. 401-430; A. Amonn, « Emanuel Hugo Vogels ‚Ziel der Währungspolitik‘. Einige Feststellungen », *Zeitschrift für Volkswirtschaft und Sozialpolitik*, 2, 1922, p. 298-306.

179 R. Kerschagl, « Die Währungssysteme in den Nachfolgestaaten der Österreich-Ungarischen Monarchie », *Zeitschrift für die gesamte Staatswissenschaft*, 78, 3/4, 1924, p. 745-778.

180 P. Grünwald-Ehren, « Grundzüge der Finanzpolitik der Nachfolgestaaten der österreich-ungarischen Monarchie », *Zeitschrift für Volkswirtschaft und Sozialpolitik*, 2, 1922, p. 428-488.

181 V. Kienböck, *Das österreichische Sanierungswerk. Finanz- und Volkswirtschaftliche Zeitfrage*, Stuttgart, Verlag von Ferdinand Enke, 1925.

182 L. Mises, « Die geldtheoretische Seite des Sanierungsproblems », *Die geldtheoretische und geldrechtliche Seite des Sanierungsproblems*, ed. by F. Klein, L. Mises, München, Leipzig, Duncker & Humblot, 1923, p. 1-37.

183 R. Schranil, « Zur Neuordnung der autonomen Finanzen in Österreich », *Zeitschrift für die gesamte Staatswissenschaft*, 75/4, 1921, p. 478-487.

184 R. Freund, *Die Genfer Protokolle. Ihre Geschichte und Bedeutung für das Staatsleben Deutsch-Österreichs*, Berlin, Leipzig, Walter de Gruyter & Co., 1924, p. 14, 106.

185 A. Feiler, *Das neue Oesterreich. Tatsachen und Probleme in und nach der Sanierungs-Aktion*, Frankfurt am Main, Frankfurter-Societäts Druckerei, 1924, p. 95-98.

63. This manifold approaches to the topic of economic crisis and the silence of legal scholarship is significant. Paradigmatically, Leo Strisower did not mention the economic reconstruction program for Austria by the League of Nations with a single word in his opening speech as president of the *Institut de Droit International* in Vienna¹⁸⁶. At this time in 1924, the economic relief program was already in place and seemed to work at least partially. This omission is symptomatic and characteristic for the approach of international lawyers towards questions of the international economic order during the interwar period.

64. The reasons for this were first methodological : No language of economic and social human rights existed yet and the approach of the Vienna School did not promote the interdisciplinary work with other social sciences. From the perspective of the Austrian legal scholars (and also their personal relations), the interaction between legal and economic scholarship might be best described as an academic division of labor. Second, the new economic theories and their foundation in statistical data were advanced by the League of Nations, which had an own interest in this discipline through its economic relief programs. International lawyers were rarely responding with legal analyses to these new challenges and had to find their place in the debates. In other words, international economic governance had yet to become a part of the international legal discourse for Austrian international lawyers and beyond.

Conclusion : International Law on the Verge of Dictatorships

65. The interwar years in Austria were not only a time of departure for international legal scholarship, but also a period on the verge of the austrofascist and national socialist authoritarianisms. The precursors of these political movements could already be witnessed during those years. Othmar Spann published his manifesto for the *Ständestaat* in 1921, a political form that did not promote democracy, but estates as political system¹⁸⁷. He has allegedly influenced Alfred Verdross and other legal scholars¹⁸⁸. Other thinkers, such as Fritz Sander and Eric Voegelin, were an active part of the Vienna School before they changed their attitudes and supported authoritarian governments later.

66. However, there was no clear trajectory that lead directly from the post-World War I time to the catastrophe¹⁸⁹. In fact, the outlook at the beginning of the 1920 s could, to a certain extent, even be described as promising. Many Austrian international lawyers sought the integration into wider transnational networks of international lawyers and the recognition of the « invisible college of international lawyers »¹⁹⁰ in these early years after World War I. The most significant milestone in this development was Strisower presiding over the *Institut de Droit International* and the convening of its meeting in Vienna 1924. The situation of international law in Germany differed in this sense from the one in Austria¹⁹¹. The new German research institutes, such as the newly founded Kaiser Wilhelm Institute for Comparative Public Law and International Law in Berlin, were mostly concerned with the practical application of international law and consulting work for Germany's Foreign Service¹⁹². Although Germany was the most important reference point, for which the vast number of publications in German publishing

186 L. Strisower, « Discours de M. le Président Strisower », *Annuaire. Institut de Droit International*, vol. 31, Paris, Louvain, Pedone, 1924, p. 78-87.

187 O. Spann, *Der wahre Staat*, Leipzig, Verlag Quelle & Meyer, 1921.

188 A. Carty, « Alfred Verdross and Othmar Spann : German Romantic Nationalism, National Socialism and International Law », *European Journal of International Law*, 6, 1995, p. 78-97.

189 For a short summary about the changes at the Viennese law faculty during the nazi era, see O. Rathkolb, « Die Rechts – und Staatswissenschaftliche Fakultät der Universität Wien zwischen Antisemitismus, Deutschnationalismus und Nationalsozialismus 1938, davor und danach », *Willfähige Wissenschaft. Die Universität Wien 1938 bis 1945*, ed. by G. Heiß, S. Mattl, S. Meissl, E. Saurer, K. Stuhlpfarrer, Wien, Verlag für Gesellschaftskritik, 1989, p. 197-232.

190 O. Schachter, « The invisible college of international lawyers », *Northwestern University Law Review*, 72/2, 1977, p. 217-226.

191 M. Vec, « Enhancements under Acid Slag. German International Lawyers on the Post-War Order », unpublished working paper, 2020.

houses and journals provide plenty of evidence, the Austrian jurists closely observed also the legal debates in other countries and considered works of foreign authors.

67. The international legal scholarship by Austrian international lawyers covered a broad range of topics reaching from international criminal law and reparations to the national minority rights, which were enshrined in the ambitious post-war legal system¹⁹³. The Paris peace system was a recurring topic in a series of legal analyses in these years, prompting questions about international law at large. The experiences from the late Habsburg Empire were an important point of departure for the jurists in thinking about international law and theorizing the global legal order.

68. At the same time, there were also blind spots in their works. The Geneva Protocols and the League of Nations' relief program for Austria were the first case of an international organization offering economic aid to a troubling state. The responses and analyses by Austrian international lawyers to this topic were marginal and hardly existing. Economists occupied this new field and it was a time that set the course for the relation between international law and economics. The Austrian School of economics was one of the most influential streams in this development¹⁹⁴.

69. The tragic waves of emigration that were triggered by the authoritarian governments of the 1930 s and 1940 s and the shortcut of the Austrian intellectual life (not to speak of the personal fates), could not be predicted from this history. International legal scholarship displayed optimism and not despair in this early period of the Austrian republic. Going back to the starting point of this article, the lessons from comparing this history of international law of the interwar period with the present need not necessarily result in concerns for our times. The situations differed from each other and the general themes in the legal discourse diverge in substance. It might be more hope than initially expected that stems from such a comparison for today.

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¹⁹² F. Lange, *Praxisorientierung und Gemeinschaftskonzeption. Hermann Mosler als Wegbereiter der westdeutschen Völkerrechtswissenschaft nach 1945*, Heidelberg, Springer, 2018, p. 28-34.

¹⁹³ J. E. Nijman, « Minorities and Majorities », *The Oxford Handbook of the History of International Law*, ed. by B. Fassbender, A. Peters, Oxford, Oxford University Press, 2012, p. 95-119 (111-113).

¹⁹⁴ Q. Slobodian, *Globalists. The End of Empire and the Birth of Neoliberalism*, Cambridge (Massachusetts), London, Harvard University Press, 2018, p. 12-13.