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Isabel V. Hull. *A Scrap of Paper: Breaking and Making International Law during the Great War*. Ithaca & London: Cornell University Press, 2014. xii + 356 pp. ISBN: 978-0-8014-5273-4 (hardcover, \$45.00).

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Essay by **John W. Coogan**, Michigan State University, emeritus

A *Scrap of Paper* is an ambitious work that sets out to correct what author Isabel V. Hull describes as a failing of existing scholarly literature on World War I: a lack of attention to international law. She maintains that “a European state community” existed in 1914 “almost identical” with the existing international legal order (330). This order played a vital role in the conflict, so the current lack of attention “eviscerates the World War of meaning.” By “restoring law” to its proper place, however, she believes her book “recaptures the fundamental issues over which the war was fought” (330). From Germany’s invasion of Belgium on, Berlin refused to abide by the community’s established rules for waging war. It adopted instead the “unique” doctrine of “German legal ‘realists’” that held that any action taken in defense of the Reich must be legal because defense of the state was the highest law, municipal or international (329). This refusal to recognize any law but self-interest strengthened the determination of the Allies to resist rather than negotiate with a nation that openly proclaimed its right to violate treaties it no longer found convenient. Modern scholars who agree with German Chancellor Theobald von Bethmann-Hollweg that international law was merely “a scrap of paper” to disguise pursuit of national interest thus underestimate the strength of law a century ago. In Hull’s view, British and French respect for international legal order, together with German disdain, ultimately proved a vital factor in Allied victory.

A Scrap of Paper seeks to integrate international law into the fabric of historical scholarship through a series of detailed case studies: Belgian neutrality, laws of land warfare, the treatment of civilians in occupied territory, British economic warfare, new German weapons, unrestricted submarine warfare, and reprisal. Hull argues that these examples demonstrate that only Germany regarded international law as contingent upon national convenience in 1914. In the Second Reich, civilian and military bureaucrats made decisions based on perceived state interest in the immediate

circumstances, leaving lawyers scurrying to devise *ex post facto* justifications that “were often strikingly narrow and technical; they were somehow sharply lawyerly without partaking in the principled sweep characteristic of law” (331). In Britain and France, on the other hand, lawyers were integrated into every level of responsible governments. British Prime Ministers Herbert Henry Asquith and David Lloyd George were themselves lawyers, as was French President Raymond Poincaré. London and Paris did not always follow the advice of their lawyers, but that advice was always heard in the decision-making process.

Several general points concerning this analysis must be noted before turning to Hull’s specific evidence and argument. She claims to write about “International Law during the Great War,” but her case studies and evidence are almost exclusively from Germany, France, and Britain. This restricted focus subjects Germany to a double standard. The actions of German armies in Belgium constitute the “Belgian atrocities” and justify an entire chapter (51ff.); the actions of Russian armies in East Prussia and Austria-Hungary are not considered. Germany’s invasion of Belgium is “an international crime” (16); the murders of Archduke Franz Ferdinand and his wife are not considered. The book’s penultimate sentence epitomizes this limited focus: “It is as if Imperial Germany could not speak the same legal language as the rest of Europe” (331). Hull cites no evidence that ‘Apis,’ the Serb intelligence chief, spoke this “same legal language” when he orchestrated the Sarajevo assassination. Indeed his name, ‘Black Hand,’ and ‘Serbia’ do not appear in her index. The author is correct: Berlin often dismissed what she describes as Europe’s common norms of “state community.” But she offers no proof that Serbia, Russia, Austria-Hungary, and the Ottoman Empire were any more respectful of those supposed norms. In *A Scrap of Paper* the phrase “the rest of Europe” means Britain and France, with minimal consideration of the statements and actions of other nations.

The second conceptual difficulty in Hull’s work is a lack of historical context beyond detailed descriptions of pre-war legal writings and conferences. If one ignores Allied propaganda about crucified Canadians and raped nuns (neither Lord Bryce nor Arnold Toynbee, the most prominent British propagandists, appears in the index),¹ the Second Reich’s “atrocities” in Belgium in 1914 seem relatively mild compared to pre-1914 British, French, Belgian, and German campaigns in Africa, to the 1876 ‘Bulgarian horrors,’ to Britain’s suppression of the 1857 Indian Mutiny, or to the sack of Beijing by Americans, Japanese, and Hull’s “European state community” in 1900. German soldiers did not exhume the head of Belgium’s King Leopold to use as a soccer ball in 1914, as British soldiers had exhumed the head of the Mahdi sixteen years earlier. Such comparisons do not in any way justify what German soldiers and administrators did in Belgium during World War I. They do provide a historical and legal context for those actions that Hull fails to address in her indictment of Germany’s international behavior as “unique” or “an extreme outlier” (329).

¹ For Hull’s brief discussion, see 4-5.

The third conceptually problematic aspect of *A Scrap of Paper* is the author's assumption that a correlation existed between the involvement of lawyers in decision-making as part of a responsible government and the degree to which the resulting decision reflected international legal norms. Hull is correct that Britain had far more attorneys in policy-making positions than Germany. Both wartime Prime Ministers were lawyers, the Lord Chancellor and Attorney General had to be lawyers, and some other Cabinet ministers such as a Chancellor of the Exchequer and a Home Secretary also were lawyers. Yet this fact hardly documents a British system of government "almost identical" with international legal order and "diametrically opposite" to a German system that excluded lawyers from decision-making (329-330). U.S. President Richard Nixon was a lawyer who surrounded himself with lawyers. They assured the world that it was legal to bomb Hanoi, overthrow the democratically elected government of Chile, and spy on the Democratic National Committee. Asquith, the most professionally distinguished attorney to occupy 10 Downing Street during the twentieth century, promised the House of Commons he would not allow the blockade of Germany to be "strangled in a network of juridical niceties."² William Malkin, a Foreign Office lawyer, suggested "pecuniary recompense" for testimony against American shippers, though he specified that the Crown should bribe only "reputable" witnesses.³ Patrick Devlin, a retired British Law Lord, wrote that Britain's wartime Prize Courts "were as much distinguished for their patriotism as for their impartiality."⁴ Court records document this patriotism, but provide little evidence of impartiality. Instead the trial judge secretly helped to draft Orders in Council he then enforced in his supposedly impartial court.⁵ There is ample evidence that British lawyers, like their German counterparts, often defined their duty as to deploy international law as a weapon to advance national interests. The author proves that British attorneys were more involved in decision-making, but not that British actions were more respectful of international law as a result of that involvement.

These problematic judgments in regard to international scope, historical context, and the comparative roles of German and Anglo-French lawyers do not undermine Hull's substantial contribution to understanding the German perspective on wartime international law. She builds on her earlier work as a leading scholar of German legal and military history to demonstrate how the German view of international law evident during World War I evolved before 1914 and even before 1871. There was little hypocrisy in the German defense of the invasion of Belgium, the deportations and mass executions of hostages, the burning of Louvain and the sinking of the *Lusitania*, and the introduction of poison gas. The highest law was to protect the Reich. Any treaty,

² 1 Mar 15, Great Britain, 5 *Parliamentary Debates* (Commons), LXX (1915), 600.

³ Minute, 4 Mar 15, Foreign Office 372/788, United Kingdom National Archives.

⁴ Patrick Devlin, *Too Proud to Fight* (Oxford University Press, 1975), 160.

⁵ Below at note ix.

precedent, or custom that compromised that duty could and should be set aside. In this context German legal justifications were “often strikingly narrow and technical,” but they were sincere and well-grounded in national legal tradition. Germans were shocked and offended when their wartime actions were “judged criminal” by the victors at the Paris Peace Conference (331). One can debate specific points of this synthesis, but its overall impact is most compelling.

As long as Hull’s focus remains on Germany, her analysis is persuasive. When she attempts to expand that focus to write international legal history, however, the analysis falters. It quickly becomes evident that her knowledge of German and British history is asymmetrical and her understanding of international law, as distinguished from German municipal law, is flawed. *A Scrap of Paper* demonstrates most impressive research in British archives, but that research does not prevent the author from confusing Lord Tweedmouth, an obscure career politician, with Admiral Sir John Fisher, the most prominent British naval officer of the Edwardian era (148). Similarly, Hull’s extensive research in international legal sources does not prevent her from asserting that “The method of commercial warfare Britain chose was capture, not blockade” (161). Capture was not an alternative to blockade, it was a means by which belligerents enforced their rights of blockade, contraband, or (more controversially) retaliation.

Errors in regard to British individuals, institutions, usage, dates, and documentation are common in *A Scrap of Paper*. Sir Henry Wilson was not “British chief of staff” in 1912 (31), for example, he was a Major General serving as director of military operations. The mistake is equivalent to identifying Dwight Eisenhower rather than George Marshall as U.S. Army chief of staff in 1942. Hull’s reference to Lord Crewe as “Robert Crewe-Milnes” (34) reveals an ignorance of British usage equivalent to identifying King George V as “George Saxe-Coburg-Gotha.” Similarly, “Lord Robert Crewe” (189) would be the younger son of a peer and would not himself have a seat in the House of Lords. Since Crewe was Asquith’s most trusted colleague in the upper house and first chair of the War Trade Advisory Committee created in 1915 to oversee the blockade, it seems reasonable to expect the author to identify him correctly. The same is true for “Lord Reginald Brett Esher” (151), an identification which confuses a title—“Lord Esher”—with a name—“Reginald Brett.” Lord Salisbury was not Foreign Secretary in the second Gladstone government, he was leader of the Tory opposition. Lord Granville wrote the 1885 memo to France that Hull attributes to Salisbury, and the quotation she identifies as from that memo was in fact from Salisbury’s 1900 memo to the United States (164-165). Such errors discredit the author’s analysis of British history despite her impressive bibliography.

A Scrap of Paper’s confusion concerning international law is epitomized by its account of the *Zamora* case. Hull’s object is to prove that “The British Prize Court was therefore a genuine legal venue where neutrals affected by the blockade could have their cases heard.” The Court’s President “Sir Samuel Evans ruled that the Prize Court would follow international law, not the innovations contained in the orders-in-council” (180). The transcript of Evans’s June 1915 verdict actually states the opposite: the orders were legal because those orders defined the law and thus could not be illegal. The

Crown's most recent unilateral statement, even if contrary to British judicial precedents and treaty obligations, constituted an unimpeachable authority under international as well as British municipal law.⁶ Hull confuses the trial verdict with the June 1916 decision of the Judicial Committee of the Privy Council which overturned that verdict.⁷ She also fails to indicate that a week after this reversal Evans refused to apply it in the *Stigstad* case. He ruled that the order of 11 March 1915 as enforced by the Crown against the Norwegian shipper was a valid assertion of the belligerent right of retaliation despite the Law Lords' ruling that part of the order violated both British and international law. Evans acknowledged in open court that he could cite no adequate legal justification for his decision, but refused to permit the neutral shipper to appeal his verdict to the Judicial Committee until the trial court's "next term," when he "probably" would explain why his condemnation was compatible with the higher court's language.⁸ He then helped the minister of blockade draft future maritime orders in council, though he insisted that his involvement in writing the rules he enforced in his supposedly impartial court be kept secret.⁹ The Evans dialect of the "legal language" Hull insists was common to all European states except Germany clearly did not include '*stare decisis*' or 'conflict of interest'.

In this context Hull's long, convoluted argument that the British 'Hungerblockade' of Germany was legal demonstrates that it was not only German legal realists who expounded views that were "strikingly narrow and technical...sharply lawyerlike without partaking in the principled sweep characteristic of law" (331). The precedents she advances to claim that international law "unproblematically sanctioned starvation of the enemy" at least through the end of the American Civil War are far more complex and contradictory than she acknowledges—too much so to explain in this review (164). The 1863 Union army general order she cites (164-165), for example, did not bind the Union navy, much less other nations. In almost every case the food shipments Britain intercepted during World War I were neutral-owned and carried on neutral ships between neutral ports. The Crown's writs indicting these food shipments allegedly destined for Germany cited the specific belligerent rights of contraband or retaliation, not a general right of one belligerent to starve the other's civilian population by capturing neutral property on the high seas. The same is true of the Prize Court's verdicts. Hull thus justifies the 'Hungerblockade' under a legal doctrine the Crown did not advance. Scholars can debate *A Scrap of Paper's* claim that "the Allied 'blockade' of World War I would probably have passed" even "late twentieth-century / early twenty-first century" international legal standards (166-7), though it is difficult to see the

⁶ John B. Aspinall, ed., *Lloyd's Reports of Prize Cases* (10 vols.; Lloyd's, 1915-24), 4:44-61.

⁷ Aspinall, 4:86-115.

⁸ Aspinall, 5:370, 384.

⁹ CJB Hurst (FO assistant legal advisor) to Sir George Cave (solicitor general), 6 Jul 16, Cave Papers, British Library Additional Manuscripts 62466; see also drafts & marginalia in Evans Papers, National Library of Wales, items #220 & 221.

historical value in such a debate. British Orders in Council, neutral protests against them, the archives of the British Treasury Solicitor and the U.S. Joint Neutrality Board, and the records of the British Prize Court and the Judicial Committee of the Privy Council would seem more relevant to the legal status of British actions than the 1994 San Remo Manual on International Law cited in *A Scrap of Paper* (166-167 et passim).

Hull's argument that the British 'Hungerblockade' was legal in 1914 culminates in her assertion that "Starvation was never the sole object of Britain's economic measures; in fact it was not the object at all" (167). Scholars can only applaud her call for "A major research project on the effect of the blockade" on Germany (169). Yet the figures she cites for premature German deaths as a result of the economic campaign range from 762,796 to 300,000 (169). Since this mortality fell most heavily on the old and the young, the author thus implies that more than a hundred thousand German children died as an unintended consequence—"not the object at all"--of actions for which the British government should not be held responsible because from August 1914 to June 1919 it was inattentive rather than inhuman (167). This disengagement of pro-British assertion from evidence and history continues with the statement that it is "absurd" to suggest that "Britain threatened neutrals with starvation" (167, note 133). Twelve pages later Hull explains how in 1916 the Royal Navy "detained twenty [Dutch] grain ships and seized Dutch fishing vessels" in order to "pressure" the Netherlands (179). Foreign Secretary Sir Edward Grey's statement to the Dutch minister in London on 25 August 1914 that Britain intended to "capture all food stuffs consigned to Rotterdam" unless the Dutch government met British demands and the 52 grain ships detained in British ports five days later¹⁰ apparently are not relevant to the point or to the history of international law during World War I. Yet the author considers it "absurd" to suggest that a neutral nation needing to import food and catch fish to feed its people would feel British actions threatened it with starvation.

Hull is absolutely correct: international law has long been ignored by historians of World War I and must be re-integrated into scholarly literature. *A Scrap of Paper*, with its perceptive and sophisticated analysis of Germany, is a vital step in that process. Hull also deserved credit for recognizing that to achieve this re-integration scholars must go beyond Germany to write a comparative international legal history. Yet her book also illustrates the danger of trying to write such history from an asymmetrical base of national historical understanding. Despite extensive research in British and French archives, the author is essentially a German historian. Her conclusion that Germany bears "primary responsibility" for the war and that those who fail to acknowledge its war guilt cause "the Great War to disappear in a haze of putative Wilsonian idealism" (329) would be more persuasive if she mentioned Sarajevo or Russian mobilization. World War I is now a century in the past. Everyone who fought in it is dead. Surely it is time to move beyond the blame debate so prominent in *A Scrap of Paper* to acknowledge that both sides share responsibility for the outbreak of the war and for

¹⁰ Grey to Sir A. Johnstone (British minister, The Hague), 25 Aug 15, FO 368/1026; Esher, diary, 31 Aug 14, Esher Papers, 2/13, Churchill College, Cambridge.

violations of law during it. International law was not the 'scrap of paper' Bethmann-Hollweg claimed in 1914, it was an essential aspect of relations between the belligerents and between belligerents and neutrals throughout the war and at the Paris Peace Conference. Only in that context can scholars with the necessary knowledge of international history and of international law write the books on comparative international law Hull identifies as vital to a richer, more sophisticated understanding of World War I.

John Coogan received his Ph.D. in history from Yale University in 1976 and taught at Michigan State University from 1982 to his retirement in 2007. In addition to articles and reviews he published *The End of Neutrality: The United States, Britain, and Maritime Rights, 1899-1915* (Cornell University Press, 1981). He is currently completing "*Two Governments So Genuinely Friendly*": *The United States, Britain, and Maritime Rights, April 1915-April 1917*.

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